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# TRADERS AND RAILWAYS

(THE TRADERS' CASE)

BY

THOMAS WAGHORN

OF THE INNER TEMPLE, BARRISTER-AT-LAW


LONDON

EFFINGHAM WILSON

54 THREADNEEDLE STREET, E.C.

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# TRADERS AND RAILWAYS.

## (THE TRADERS' CASE.)

### INTRODUCTORY.

DURING the four years which ended in July, 1907, the Court of the Railway and Canal Commission has been called upon to hear sixteen applications in which traders have sought redress against the treatment experienced from railway companies.

In two of these cases the relief asked has been granted.

As against the cost incurred in bringing sixteen cases to a hearing, the applicants have obtained a slight change in classification and other advantages worth, perhaps, £200 per annum.

How is it that traders bring only four cases in a year before the Railway Tribunal?

How is it that only on two occasions during a period of four years have the traders' grievances been held to be well founded?

The answer appears to be that the Legislature and the Courts take essentially opposite views as to the duties and obligations of railway companies, and as to the rights of traders with respect to the conveyance of their traffic.

The Legislature at different times, particularly in 1845, in 1854, in 1873, in 1888, and lastly in 1894, has given serious consideration to the question of traffic regulation, and has passed Acts of Parliament in which every endeavour has been made to mete out equal-handed justice between the companies and the traders.

For reasons, difficult for the traders to appreciate, the Courts of Law have invariably dealt reluctantly with this legislation. When judges have not openly denounced the provisions approved by Parliament they have not hesitated to express their extreme unwillingness to enforce them; others have followed in the footsteps of Chief Justice Erle, who declared the legislation of 1854 to be absolutely revolting, and the result is that, one by one, each and every legislative enactment for the protection of traders has been weighed by the Courts and found to be wanting. When legal decisions have gradually rendered the provisions of one statute of no effect the Legislature has re-enacted them, in other words, in a new statute, which, after a short span of activity, shares the fate of its predecessors. The Traffic Act of 1888 was effective for a while, but legal decisions have now swept nearly the whole of it away; there may be a fragment of traders' protection still left standing, here and there, and in reliance on this residuum a trader once in a term may appeal to the Courts for redress, and once in two years he may possibly obtain it.

Nothing more can be done than this unless and until a further Traffic Act is passed. The object of the following pages is to call the attention of traders to the various statutory provisions passed at different times for their

protection, and to offer suggestions as to their re-enactment and as to the steps to be taken for their enforcement. The constant advance of mechanical science has made it a matter of impossibility for railways to be worked in any other manner than by the companies themselves; hence it is that the Legislature is confronted with the difficult problem of adjusting the respective rights of the owners and of the users of the great highways of the Kingdom. This difficulty is rendered much greater than it would seem that it need be by the attitude adopted by the Courts. As it has just been said, the Courts look upon every legislative enactment regulating the rights of the parties as an encroachment upon the rights of the railway companies and as a quasi-confiscation of the shareholders' private property. Why learned judges should invariably adopt so oblique an aspect of what seems so simple a question it is hard to say. The fact remains that they do, and their hostility is even more pronounced than is here stated. It is a factor which requires to be taken into serious consideration in all future legislation.

Originally the construction of a line of railway was supposed to stand upon the same footing as the construction of a road or of a canal. The company of proprietors made it, and they expected profit on their outlay by means of the "tolls" chargeable for its use.

So the Parliamentary Committee of 1853 report, when recommending the provisions of the Traffic Act of 1854. They thus describe the position:—

When the first Railway Bills were passed and the present system of railway legislation was gradually acquiring shape, the ordinary traffic of the country was conducted upon the roads and canals.

and the new system offered to the country the option of an improved mode of transit, which was naturally accepted in the terms in which it was offered. Nor can it be doubted that railways were expected to be in practice what they are in contemplation of law, new highways freely open to the public to pass with engines and carriages at their own discretion.

But in course of time the ancient methods of transit have necessarily fallen into disuse, and the railways have become the only mode by which the greatest part of the internal communication of this country can be conducted, while considerations of public safety and other circumstances have placed the management and use of them exclusively in the control of the railway companies.

In passing from the ruder to the more artificial system, while the greatest advantages have, on the one hand, been attained, on the other hand, some sacrifice has been made of the freedom with which individuals are able to exercise their choice of route and to select the means of locomotion they employ.

That is to say, that with the advent of railways neither roads nor canals remained available for long-distance traffic, and as the working of the railways was, of necessity, placed in the hands of the companies it devolved upon the Committee of 1853 to make inquiry into the subject, and after due investigation and after hearing both sides, to express an opinion as to the regulation desirable.

This Committee formulated three main principles as the basis of railway regulation:—

- Equal treatment of all freighters ;
- Limitation of powers of charge ;
- Provision of reasonable facilities.

It was anticipated and feared that if railway companies were allowed to become carriers on their own railway they would endeavour to exclude other carriers, so as to obtain for themselves the monopoly of all inland carriage.



In granting what they did grant Parliament withheld the powers tending to monopoly, and based their legislation on the principles above mentioned.

It is natural that railway advocates should exclaim against every vestige of control, and should characterise every regulation Act as iniquitous ; traders cannot conceive on what grounds the Courts should yield to the companies' views and should exhibit such persistent hostility to every phase of railway legislation.

The form of infringement of the Acts by which the interests of traders are most injuriously affected, consists in the excessive reduction of rates when a newly competing company seeks to divert established traffic from its natural channel, coupled, as an obvious consequence, with the retention of comparatively high rates on traffic which is non-competitive.

The dislocation of business resulting from this line of policy causes a loss to British manufacturers out of all proportion to any gain anticipated by the companies, and most especially so when the preferential rates put in operation are quoted for foreign imported produce. Indeed, so far from gain resulting, the loss to the shareholder arising from "unhealthy" competition, coupled with neglect of local traffic, left to take care of itself, is probably far greater than that which traders as a whole are called upon to suffer.

What one trader loses another trader may gain ; what one shareholder takes from another shareholder, that other shareholder, in retaliation, seeks to take back from him again, and in the eager contest loss ensues to both.

If looked at in their true bearing, it cannot fail to be

seen that, although traffic regulation Acts are passed at the instance of the trader and for his protection, they have had still greater effect in protecting the interest of the railway shareholder. To the extent that railway managers have been compelled to obey them, or have voluntarily submitted to them, to that extent their shareholders have prospered ; to the extent that managers have violated the rules of traffic equity, to that extent dividends have fallen and railway stocks have declined in value.

If the law of railway traffic, now destroyed, could be rehabilitated once again, as suggested in the following pages, and if a strong-kneed tribunal could be given power enough to enforce it, a value of £100,000,000 sterling might well be added, even now, to the railway stocks of the United Kingdom.

The writer has submitted views similar to these, elaborated in detail, to the chairmen and managers of the principal English railways. No one has challenged or disputed them ; on the contrary the conclusions arrived at have met with universal concurrence.

The present treatise is compiled solely in the interest of the trader, but although it is the trader's case which is here presented, it must be borne in mind that in very many instances, most probably in all, the trader's interest and that of the shareholder run in strictly parallel lines. In the main it will most certainly be found that no benefit to the one will accrue from injury to the other. Nothing in these pages is indited with any intent of doing injury to the railway shareholder, although the object of them is to submit the trader's view of railway equity and

to suggest such measures as may be effectual in enforcing it with stringency. With this view it is proposed to deal with all the points in controversy, and to suggest the form of the remedy which traders would be well advised to press for.

The following are the principal matters dealt with:—

**CONDITIONS.**—The Carriers' Act of 1830 was passed to prevent carriers from announcing that they would not be bound by the provisions of the Common Law in matters relating to traffic. A whole series of Acts has been passed with the same object, and with the same result. No matter what the language of the statute may be the Courts steadily refuse to give effect to it. As in 1830, so now; the companies draw up their own consignment notes, the consignor forwards his traffic notwithstanding, and here, in the eye of the law, or of the judges who administer the law, is a "special contract" which removes the transaction at once from the operation of the statute, although, so the trader thinks, this was the very thing that statute after statute was passed to prohibit.

**OWNER'S RISK.**—As an alternative to their prohibitive maximum rates the companies frequently offer a rate "which the traffic can bear," coupled with the condition that the conveyance is to be at "owner's risk". The terms of the owner's risk consignment note are admitted to be unreasonable in the highest degree. The only justification put forward for them on behalf of the companies is, that they are so manifestly unjust that in the case of favoured traders they have not so far enforced them.

**SPECIAL CONTRACTS.**—The case of Watson, Todd & Co.

v. Midland Railway is referred to in detail as an illustration of the method adopted by the Courts with traffic Acts of which they do not approve. Especial attention is directed to this as showing the need for stringently worded legislation upon the legal doctrine of "special contracts".

UNDUE PREFERENCE.—The keynote of all traffic regulation Acts is the equal treatment of all traders. This doctrine it is which is so obnoxious to every legal mind. With the most insignificant of exceptions, every complaint of undue preference has been steadily rejected by the Courts for the past twenty years. The Traffic Act of 1888 introduced some apparent exceptions to the rule of equal treatment, and since 1888 the exceptions have become the rule, and the rule itself has become almost completely obliterated by them.

COMPETITION.—Should other pleas fail the excuse of competition is never wanting. Directly or indirectly competition is the cause of every reduced rate, and if accepted as an answer to a complaint of undue preference, as it is, the applicant may know beforehand that such a complaint will be dismissed almost before it is made. Little consideration is required to convince an unprejudiced mind that the rule of "equal treatment" is as beneficial to the railway shareholder as the exception of "competition" is disastrous to him and to the trader.

THROUGH RATES.—By an amendment introduced in the Act of 1888, a trader was authorised to apply for a through rate to the Railway Commission. The Courts easily swept that enactment away by declaring that it did not apply to traffic to or from a private siding. Pre-

sumably no trader whose traffic was not large enough to require a private siding would ever think of making application for a through rate, so by introducing this exception the whole legislation on the subject was at one blow annihilated.

PREFERENCE OF FOREIGN MERCHANDISE.—The Traffic Act of 1888 seems to forbid the preference of foreign merchandise in the plainest of distinct language. So far as the main rule is concerned it is difficult to see how words could be penned more precise or more peremptory. But the enemy has sown the tares of exception in this field also, and the Act, instead of being general, is made to apply to the "same or similar circumstances" only. It is impossible for the circumstances to be the "same"; by a narrow construction placed upon the word "similar," as is in fact done, the whole rule can be thrown by the board and treated as non-existent accordingly. This is what the Courts did with it, the first, and consequently the only time it came before them. As though this were not sufficient, "competition" is also held to afford a valid answer.

AGRICULTURAL RATES.—A Departmental Committee has recently inquired into the question of the preferential treatment of foreign agricultural produce. Expert evidence given on behalf of the Central Chamber of Agriculture and of the National Fruit Growers' Federation, compared the circumstances of "foreign" and "home" produce as regards bulk, regularity, packing, facilities, long and short distance, and so forth. After making due allowance for all these differences, it was shown that, as a standing rule, all foreign produce was carried on



English railways at half the rates charged on English produce. The facts and figures were scarcely challenged on the part of the railway managers, but the Committee, persuaded by them, and following the decisions of the Law Courts, reported that preferential rates were, in their opinion, justified by the necessities of competition. In a treatise on agricultural railway rates, published on behalf of the railway companies, it is stated that the low rates quoted for potatoes by the South-Western Co. have immensely increased the value of potato-growing land around Dol and elsewhere. In the chapter on this subject it is pointed out that this traffic is carried at a loss to the railway company, and that increased railway rates in Lincolnshire have put out of cultivation as much potato-growing land there as has been put under cultivation in Brittany.

CONCILIATION.—The Act of 1888 has introduced provisions conferring on the Board of Trade a mediating power and authorising that Department to effect an “amicable settlement” of complaints as to “unfair or unreasonable rates of charges” or of “oppressive and unreasonable treatment” in any form. This section has never been submitted to the Courts for interpretation, and it is the only protective section still in full vigour of operation.

ARBITRATION.—When complaints are brought before the Board of Trade under the so-called “conciliation clause,” the Board, having no coercive power, limit their conciliation to minor matters only. When complaint is made of illegal treatment, of matters of general as opposed to individual interest, or of matters within the special jurisdiction of the Railway Commissioners, com-

plainants are advised to make formal application to that authority. What is urgently needed is the institution of some intermediate tribunal with power greater than that of mere conciliation but with a procedure more informal and flexible than that of a High Court of Record.

**MAXIMUM RATES.**—When companies were authorised to undertake the duties of carriers on their own lines, certain maximum rates were fixed and charges were sanctioned of a “reasonable sum” within this maximum. Unfortunately Parliament has omitted to prescribe how a reasonable rate has to be determined in case of dispute. The companies claim to be sole judges of reasonableness of charge, and in their quasi-judicial capacity they decide that the full maximum itself is the “reasonable charge within it” for all ordinary traffic. For traffic, such as the bulk of agricultural traffic, not loaded or unloaded by the companies’ servants, and for non-carted traffic when charged at cartage rates, the rates charged would frequently be above the maximum.

**SPECIAL CHARGES.**—There has been a vast amount of litigation connected with these charges. The traders assert that the railway companies have broken faith with them and with the Board of Trade in the action they have taken under these sections. To any one not brought up in the study of legal distinctions it would seem that the words of the statute are only susceptible of one interpretation, and that every dispute with respect to special charges is required to be submitted to arbitration. The words are, “Any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party”. The

railway companies contend that these words mean that the difference shall be determined in an action brought by them in the County Courts. This question has been brought eight or ten times before as many Divisional Courts. In no single instance, upon no set of circumstances, has a Divisional Court ever decided this point in favour of the trader; every judge, without exception, says that in this section the word "arbitrator" means "the County Court". The Court of Appeal, in reversing the decisions which the trader has been obstinate or wealthy enough to bring before that Court, have expressed themselves unable to comprehend the reasoning of their learned brethren in the Court below. That does not matter; the railway companies bring their actions in the County Courts in just the same manner as before, and when they win they keep their verdict.

SIDING RENTS.—It is mainly to siding-rent charges that the foregoing observations apply. The story of the siding-rent litigation is instructive as showing how the most persistent of traders may be worn out by unceasing litigation. The coal merchants were convinced, and they remain of that opinion, that the charges made were made in violation of pledges given to the Board of Trade; that an "arbitrator" does not mean the County Court; that the actual charges made are unreasonable in the highest degree. After spending some £10,000 in litigation their powers of resistance were worn out and the companies now remain complete masters of the situation.

Other traders have taken warning by the fate of the coal merchants and allow the companies to do whatever they think fit under this head.

**COLLECTED AND DELIVERED RATES.**—Under the section referred to the companies may make a charge for cartage when performed at the trader's request. This point has been before the Courts, and it has been decided that they may make the charge when the consignor performs the service of cartage himself: if the charge is not authorised under this section, then it forms part of "reasonable conditions" of transit which the companies are justified in upholding. Anyhow, the carting consignor must pay the charge and get back as much of it as the companies of their own free will think fit to pay him.

**INCREASE OF RATES.**—The Act of 1894 provides that when rates are increased above those in force in 1892 the reasonableness of the increase may be determined by the Railway Commission. This is one of the few provisions of the traffic Acts under which the traders have been in part successful. Opinions of the judges are divided upon the question of what constitutes a plea of justification, and the matter is one still requiring the determination of the Legislature.

**DAMAGES.**—Traders are of opinion that they are entitled to substantial damages if they can show that they have been injured by illegal treatment. The provisions of the Legislature are hesitating and indefinite upon this point. Damages were awarded in some very early cases, but no "damages," other than a refund of overcharges, have been awarded during the years which have elapsed since the passing of the Railway Regulation Act, 1873.

**REASONABLE FACILITIES.**—The Traffic Act, 1854, provides that the companies are to afford all reasonable facilities within their power. The words of the section



are far too indefinite for enforcement. In the case of the Hastings Corporation the Court of Appeal laid down a series of general rules which it is very desirable should be embodied in an amending or codifying Act.

LITIGATION.—On the supposition that the merits of a case are evenly balanced the odds are more than ten to one in favour of the defendant railway company. More than one Parliamentary Committee has remarked upon the inequality of position when an individual applicant seeks to obtain redress against a powerful corporation. Some difficulties might be removed from the path of the applicant by alterations in the rules of procedure. In other ways the parties might be put upon a footing of greater equality if the facts mentioned later on were brought under the notice of the Legislature.

APPEAL.—An appeal from the Railway Commissioners cannot be taken beyond the Court of Appeal, and is confined to questions of law. The Lords Justices of Appeal cannot be expected to be conversant with the intricacies of railway law (they do not profess to be so), and an appeal to that Court by traders is not ordinarily successful. A suggestion is made later as to the steps to be taken when the decision of the judge of first instance is manifestly at variance with the general spirit of the legislation.

COSTS.—When it is necessary to make three or four companies defendants the risk of being condemned to pay three or four sets of costs has been sufficient to deter many applicants from seeking to enforce their view of the companies' rights.

The Act of 1894 withdraws from the Railway Commissioners the power, accorded in 1888, of awarding costs.



The rule should be made applicable to the Court of Appeal.

ENFORCEMENT OF LAW.—The reasons mentioned in the last few paragraphs, as illustrated by the fact that traders have obtained two decisions only in their favour during the past four years, are sufficient to show that under existing circumstances the law of railway regulation can only be enforced to the very smallest extent. Various suggestions as to improvements are made throughout these pages, but the radical difficulty consists in the diffuseness, the inconsistency and the uncertainty of the statute law upon the subject. As each succeeding Act in part repeals, in part amends, and in part confirms the prior ones, the Statute Book is encumbered with 300 pages of heterogeneous precepts, and the confusion becomes such that a Court, before whom a single point on the interpretation of a single section is brought, is altogether incapable of understanding it. It is hardly possible for the Courts to enforce the intentions of the Legislature so long as they are expressed in a form so cumbersome and unwieldy.

For want of understanding there is much unwillingness on the part of judges to enforce the law of railway traffic, but, with the utmost goodwill on their part, chaotic legislation imposes too unreasonable a task upon them when the law they are called upon to administer is hidden, as it were, in an impenetrable jungle. The cost of preparing an intelligible code of railway law, drawn up in the untechnical style of the Indian Contract Act, would not exceed the cost of one dismissed action, and if this were once done the Government would in all probability

see it safely carried into law. If traders are unwilling to loosen their purse-strings to even this small extent, it hardly lies in their mouths to complain that judges hesitate to determine unintelligible law in their favour.

RAILWAY COMBINATION.—In all matters of general importance railway companies have for some time past ceased to act on their individual initiative. The Railway Association, originally formed to ensure a certain unity of action in the railway interest, has now assumed pleni-potentiary powers, and, when the predominating companies are of one mind, the Association issues its mandates and the whole railway organisation submits. By means of the pressure put upon more liberal-minded companies everything of the nature of a concession to traders is gradually being withdrawn. Such benefits as the traders have hitherto obtained as the result of competition are rapidly being put an end to by district conferences. These, under the ægis of the Railway Association, prescribe the attitude to be adopted by the officials under their control, to the minutest detail of administration. When the new authority of these conferences has become firmly established, and when they get into the full swing of activity, traders will find that they will have to submit to the views of the railway officials upon every point where railway and trading interests may not happen to coincide.

TRADERS' UNION.—If it were once possible to take the first step towards the formation of a freighters' protective association such a body would form a counterpoise to the Railway Association. Local authorities are empowered to act by the Traffic Act of 1888, and if they would form

the nucleus of such a confederation, traders might have the chance of meeting railway companies and of discussing traffic law with them upon a more equal footing.

RECOMMENDATIONS OF PARLIAMENTARY COMMITTEES.—Parliamentary Committees have been appointed at different times to report upon the traffic management of railways. Everything suggested in the following pages is consistent with their recommendations. It is only where the machinery appointed for carrying them out has proved inadequate, or has broken down, that amendments or modifications of existing laws have been advocated.

PENALTIES.—The clauses imposing penalties upon railway companies have never been treated as having any serious significance. Penal clauses against the public, and in protection of the companies, have been rigidly enforced by fine and imprisonment, but every company has knowingly incurred penalties which, if enforced, would probably equal the whole of its subscribed capital.

PUBLICATION OF RATES.—Provisions relating to publication of rates are studiously ignored by the companies, though penalties are enforceable for non-compliance. All these clauses require careful reconsideration.

AMENDMENT.—In one instance when the Court of Appeal gave a decision, repealing in one short sentence the whole of the legislation relating to through rates, an amending Act was brought in by the Board of Trade and passed without contest. This should form a precedent as to the course to be adopted when decisions are given in manifest opposition to the letter and spirit of existing legislation.

CONCLUSION.—A codifying Act, expressed in simple, everyday language, is the one remedy capable of allaying the traders' grievances. Patchwork legislation is at the root of all traders' troubles, leaving them, in a very short time, worse off than before.

## CHAPTER I.

### CONDITIONS.

BEFORE the date of the introduction of railways the respective rights and duties of the public and of carriers had been defined by the Courts of Common Law. The general principles of carrying law had gradually come to be clear and well defined, and with some obvious exceptions—"act of God," "restraint of princes," "inherent vice"—a carrier was held responsible for the safe delivery of goods entrusted to his care. Whereupon it gradually became the custom for carriers to exhibit notices in their offices, not always placed so conspicuously as they might have been, announcing that they would only receive certain articles for conveyance upon certain conditions as to liability. The Courts held that if a consignor, or a consignor's clerk, or carman, had seen, or might have seen, one of these notices, and had notwithstanding this, handed the traffic to the carrier to be forwarded, then the exhibition of the notice and the handing over of the goods together created a "contract," and that the owner of the goods was bound by the conditions dictated by the carrier, however much they might depart from the recognised principles of law. The Legislature from early times



seems always to have been at variance with the Courts on matters relating to traffic. They interposed in the controversy with the Carriers' Act of 1830. In this Act the claims of carriers as to "valuables" were first admitted and provided for by requiring declaration and insurance, and then the statute proceeds to enact that "no public notice or declaration shall be construed to limit" the carrier's liability at Common Law, but that all common carriers shall continue to remain liable to their Common Law obligations, "any public notice or declaration by them made and given contrary thereto or in anywise limiting their liability, notwithstanding". If the Act had ended here all known subjects of dispute would have been disposed of. But the Act continues and adds fresh fuel to the controversy by introducing new contentious matter. The next section but one is a proviso that the Act shall not be construed to annul any "special contract". When, soon after this time, railways began to be constructed, and railway companies were authorised to become common carriers on their own lines, they speedily invented the idea of providing consignment notes with conditions of their own devising printed on the back. Unless these were duly signed or had a carman's "mark" put upon them, the company's agents refused acceptance of the traffic. Accordingly, the dispute as to implied contracts came before the Courts once more and again the carriers' practices were declared to be valid. The judges held that all that was meant by the Act of 1830 was that a contract should not be implied merely by the fact that the consignor's agent might have seen a notice, but if his attention had been specifically called to the proposed

conditions, and notwithstanding all this, he still required the goods to be forwarded, then a valid contract was entered into, which was in fact the "special contract" the Act had expressly had in contemplation. In the case of *Carr v. Lancashire and Yorkshire Railway Co.*, the company had given notice that they would not carry horses upon any other terms than the signing of a contract note exonerating them absolutely from responsibility arising from any cause whatever. When the consignment note was signed and the horse was committed to the company's care, their servants straightway killed it by sending the horse-box in which it was put by "flying shunts" backwards and forwards upon their sidings. The Barons of the Exchequer Chamber expressed the opinion that if the Legislature desired that contracts by consignment notes should not be binding, they should pass a clear enactment to that effect. Baron Parke, in giving judgment, said:—

It is not for us to fritter away the true sense and meaning of these contracts merely with a view to make men careful. If any inconvenience should arise from their being entered into that is not a matter for our interference, but it must be left to the Legislature, who may, if they please, put a stop to this mode which the carriers have adopted of limiting their liability.

The Legislature did please, and they tacked on a most uncouth section to the Act of 1854 then in draft before them, but unfortunately it was as incomprehensible as the Act which it was purporting to amend, and the judges disagreed more heartily than ever as to the decisions to be given under it. According to Chief Justice Cockburn it was a salutary measure, wisely passed by the

Legislature to correct a manifest wrong; according to Chief Justice Erle it was "absolutely revolting," and it was none the less so when presented in the specious manner in which his learned brother Chief Justice Cockburn had presented it in the Court below. According to the new Act "special contracts" were to be binding, but they must be in writing, and must moreover be reasonable. This left matters precisely as they were before, since, notwithstanding the abuse poured out upon it, the new section turned out to be a very feeble thing. Consignment notes had always been in writing, if print is writing, and inasmuch as the conditions were required to be reasonable the judges immediately found that they were. The Traffic Act, 1854, required the companies to be carriers of horses and cattle. The companies yielded a modified compliance with the statute, attaching to it conditions of their own dictating.

In the case of *Wise v. Great Western Railway*, the conditions were embodied in the consignment note, which ran thus :—

NOTICE.—The *directors* will not be answerable for damage done to any horses conveyed by this railway. I agree to abide by the above notice.

Signature of sender.....

Here, then, is the written contract which the Act requires, and when it is argued that it is unreasonable that the company should stipulate for complete immunity from the consequences of negligence, misconduct and every kind of wrong-doing, the Barons of the Exchequer cannot be brought to accept that view. "It is the most reasonable stipulation in the world," they say. And in

a similar case they hold again, "It is quite reasonable for the company to make such stipulations". In this case, *Pardington v. South Wales Railway Co.*, the notice and contract which the Court found to be "quite reasonable" were, first, the notice contained in the consignment note:—

The form below is to be filled up and signed by the party desiring to send cattle. And unless this and the following rules be complied with, the cattle will not go forward; and, next, the form containing the stipulation that the company is to be held free from all risk and responsibility arising from any cause whatever.

The company had received notice to supply cattle trucks. They supplied covered salt vans, and owing to the lid of one becoming closed, ten cattle were suffocated.

Why not? "There was a written contract" and there were "reasonable conditions," and if the cattle got killed, why, no doubt this was precisely what the Legislature intended.

This was in 1856, two years after the Act requiring railway companies to be common carriers of cattle. The companies refuse to obey the Act and announce that they will not do so; they decline to forward the plaintiff's cattle unless his drover agrees in writing to submit to their refusal, and the judges hold all this to be perfectly "reasonable". This high-handed defiance of the Legislature appeared to be natural and reasonable to every one who had formed the opinion that railways were the private property of shareholders and that it was verging on "confiscation" when Parliament interfered to regulate the traffic upon them. Nine judges out of ten hold this opinion at the

present day, and this is how it is that traders, when they seek to rely upon the provisions of the traffic Acts, have been refused redress in every case but two during the past four years. The remedy which is suggested, so far as unreasonable conditions of consignment notes are concerned, is that the form of the consignment note should be approved by the Board of Trade for ordinary traffic and by the Board of Agriculture for agricultural traffic. No new principle is contained in this suggestion. It has always been the practice to make bye-laws and general regulations subject to such approval, and the standard form of consignment note has for a long time been under informal discussion between the Board of Trade, the railway managers and representatives of traders' associations.



## CHAPTER II.

### OWNER'S RISK.

THE observations of the last chapter are specially applicable to the questions of "owner's risk" which are engaging the attention of the trading public at the present time. The writer has dealt with them at considerable length in three articles which have appeared in the February, March and April numbers of *The World's Carriers*, and from these some of the following comments are quoted. The form of owner's risk consignment note now in ordinary use is open to observations of the same character as those of the previous chapter. In one sense it may be truly said that no compulsion is put upon the freighter to sign it, but in another sense, and the real working sense, there is. The South-Eastern Company, for example, are authorised to charge for butter, poultry, etc., from Maidstone to London, 40s. per ton: 1s. per ton per mile for 40 miles. Such a rate as this absorbs all the farmer's profits and is more than the traffic can bear. Accordingly, a 20s. rate is quoted, and at such a rate it is possible for traffic to pass. But coupled with the quotation of "a reasonable sum within the maximum," which is all that the companies are entitled by law to charge, the com-

pany imposes the inequitable conditions of their "owner's risk" consignment note. Under these, elaborated from the conditions found reasonable in the cases of Wise and Pardington, the company exempt themselves

from all liability for loss, damage, misdelivery, delay or detention (including detention of trader's trucks), except upon proof that such loss, damage, misdelivery, delay or detention arose from wilful misconduct on the part of the company's servants.

The tone of this is not quite so arrogantly defiant as the Great Western notice that, statute or no statute, they would not convey the traffic unless the terms they dictated were submitted to, but, couched as it is in more suave language, the result is not substantially different when the alternative to acquiescence is the payment of an impossible charge. In all ordinary cases the trader does not know the cause of damage; if he does, he would have to call the company's servants to prove their own negligence; but if he is successful in satisfying the onus of proof as to fact, it is still incumbent on him to prove that the misconduct of the company's servants was wilful. It was pointed out by the Court of Appeal in *Lewis v. Great Western Railway Company* (a case of bad loading of cheese) that conduct does not necessarily become *misconduct* by the mere fact that it results eventually in loss or injury. The company's servants may be negligent in the extreme when their duty is to be prompt in forwarding perishable traffic; they may by carelessness forward it to the wrong destination, and trouble themselves but little about it when it is there. But when it is a question of putting a meaning on the exact words of the consignment note, it can hardly be said that these

errors or omissions come within a fair definition of misconduct, and none would be "wilful" in the sense that the resulting damage was deliberately occasioned. With this interpretation of the words, the exception apparently made in the trader's favour in the consignment note would cover nothing ever likely to happen except distinctly proved cases of theft. Mr. Pratt, the literary advocate of the railway companies, has published a pamphlet, entitled "German v. British Railways," written, as he informs us, with "special reference to owner's risk and trader's claims". Mr. Pratt has, at some time or other, written in defence of every existing railway shortcoming or anomaly, maintaining that it is the railway companies who are right entirely, and the public, the Legislature, and the Board of Trade who are wrong entirely, on every point where dispute arises. Bold as Mr. Pratt usually is in his unflinching advocacy of railway wrong-doing he has not the courage to contend that these conditions are anything but unreasonable. The railway companies, acting through the Railway Association, have expressed their determination to adhere to them, although in the treatise published specially in defence of them there cannot be found a word in their justification. According to Mr. Pratt the fact of their excessive unreasonableness does not in the least matter, because each separate company, in its individual capacity, disregards the conditions imposed and meets every just claim without delay or hesitation. Formerly they did so more readily than they do now, since, as the book tells us, a railway clearing house committee has been formed to adjudicate upon claims for compensation. This is one of the first fruits

of the companies' new policy of "combination". As to the present mode of dealing with claims, we are told, through Mr. Pratt, that

if, in investigating claims for damage, partial loss, or delay, there is found to be evidence of wilful misconduct on the part of the railway servants the companies do not require the trader to prove "wilful misconduct"—in the terms of the owner's risk note—but deal with the claim in what they regard as, in the circumstances, a "reasonable manner".

This is the utmost that can be said in extenuation of such a document as an owner's risk agreement note in the course of a whole pamphlet expressly written in defence of it. The companies compel the trader to be bound by iniquitous conditions, and then say that this constitutes no grievance worth mentioning, because, if not formerly, at any rate now, they intend to act in "what they regard" to be a reasonable manner when once "wilful misconduct" has been established against them. In days prior to the present era of combination payment of claims was not governed by reason, but by favour and competition.

The stress of competition among the railways led the individual companies, as a matter of policy, and to retain the favour of particular traders, to show much latitude in meeting claims.

In fact, the whole laboured apology amounts to a full admission that the companies knew that their claims as to owner's risk were unreasonable and illegal and excuse is made that wrong-doing in one respect was rectified by wrong-doing in another. Unreasonable conditions were not enforced in the case of favoured traders and where competition existed, but they were enforced in the case of

non-competitive traffic (including nine-tenths of the agricultural traffic of the country) and in the case of all small and unfavoured traders.

Dissatisfaction on this point among traders waxed very strong, and it was hoped that a bill promoted in Parliament dealing with "railway contracts" would have met with Government support. Mr. Lloyd-George expressed his sympathy with the complainants to a deputation who waited upon him, and committed himself to the opinion that the interests of trade were more considered on German railways than they were in Great Britain. "Following on this pronouncement of the President of the Board of Trade, I thought it worth while to visit Germany," says Mr. Pratt, and he gives the results of his inquiry in three chapters: "I. Owner's Risk and Trader's Claims"; "II. Transport Conditions in Germany and England compared"; "III. The 'Greatest Satisfaction' Story". The last chapter is a misrepresentation of various traders' complaints expressed in language eminently discourteous to them and disrespectful to the President of the Board of Trade.

In the chapter on Owner's Risk the British system is explained as above. The German system is stated to be the reverse of this. In Germany conditions as to risk and as to the respective rights and obligations of traders and railways are, on the face of them, as reasonable as it is possible to make them, or, as Mr. Pratt elects to put it, "On paper it looks well—very well indeed". But the mischief of it all is that German reasonable regulations are intended to be enforced, and not to be set aside at the caprice of managers bent on favouring particular individ-



uals, and it is found useless there to make claims against a State bureau unless they are in strict accordance with the governing regulations.

Upon other conditions of transport German and English methods are compared. The gist of the comments is practically the same in every instance; good regulations in Germany are inconvenient when they are strictly enforced; bad regulations in England are administered with much elasticity, and the preferential treatment resulting is represented as sufficing to justify every illegality or anomaly of which an English trader may be ill advised enough to complain.

The President of the Board of Trade is soundly rated for not following in the footsteps of his more illustrious predecessors, who, so Mr. Pratt implies, consistently ignored all trader's complaints. The last paragraph of the book sums up the railway view of complaints as to owner's risk:—

Naturally, all traders like to pay as little as possible in the way of railway rates. But the present agitation in reference to owner's risk rates was initiated, in one district, by a comparatively small body of traders, who have, however, managed unduly to magnify the question by obtaining the assistance of Chambers of Commerce, and through them that of the Mansion House Association. The officials of these bodies are, no doubt, eager to justify their existence by helping to maintain a continuous flow of grievances against the railway companies, and, with a sympathetic President of the Board of Trade, such a task is rendered all the easier of accomplishment.

In the whole of this pamphlet, professedly written to enlighten public opinion as to the proposed legislation on owner's risk now before Parliament, there is nowhere to be found any statement of what the trader's grievance

really is, and still less is there any attempt to make a logical answer to it; there is no syllable suggesting that the companies' overbearing conditions are capable of justification, but the companies seem to consider the whole question is sufficiently disposed of when they put up a flippant writer to make contemptuous references to "average critics," "agitators," "eager officials," "sympathetic presidents," and so forth.

The paragraph last quoted is typical of the style and argument, if argument it may be called, of the whole book, and constitutes a fairly sufficient proof that the companies can find no answer to the traders' remonstrances under this head.

## CHAPTER III.

### SPECIAL CONTRACTS.

THE views expressed by the judges in giving decisions under the early traffic Acts that the mere forwarding of traffic constituted a "special contract" involving liability to pay any sum, legal or illegal, which the companies demanded have been adopted and acted upon by the Court of Appeal within the past few years. The case of *Watson, Todd & Co. v. Midland Railway Company* is reported in 9 *Railway and Canal Traffic Cases*. The applicants were millers in Birmingham, and having a private siding of their own, they did not require the company to provide them with station accommodation, warehousing, terminal services nor cartage, all of which items were included in the rate of 6s. 10d., from Sharpness to Birmingham.

The applicants were desirous of bringing grain to Birmingham *via* Sharpness, and on the 28th January, 1895, they wrote the defendants stating that they did not require the services above mentioned and asking for a corresponding rebate to be allowed from the ordinary rate. The Midland Company wrote refusing to allow any rebate whatever. On the 1st March, 1895, Messrs.

Watson, Todd & Co. filed their application in the Court of the Railway and Canal Commission stating that disputes had arisen as to the terminal charges included in the rate, and praying the Court to determine them in accordance with the provisions of the traffic Acts relating thereto. The applicant firm valued the terminal services at 4s., and maintained that 2s. 10d. was all that was due for the simple service of conveyance.

A fortnight after the filing of the application a cargo arrived at Sharpness and the grain was forwarded in due course to Birmingham.

Upon these facts the Court declined to entertain the application or decide the controversy between the parties.

The railway company had named their terms; the traders had forwarded the traffic; by these facts a "special contract" had been entered into to pay the railway company the sums demanded by them, whatever they were, and the Court could only enforce that contract.

On appeal, the Court of Appeal adopted the same view. Lord Esher said:—

The applicants clearly understood the meaning of that because they protested and said, "We do not like to send our goods upon these terms; we understand that you will not take them on any other terms; we shall therefore deliver our goods to you under protest, and then we shall do what seems fit to us afterwards". Thereupon they sent their goods and their goods were carried. Now, if it was a contract which the railway company had power to make with them, and they sent their goods under that contract, their sending them under protest is merely idle.

So as late as in 1896, although the protest which the applicants made took the form of an application to the Railway Commission to exercise the authority entrusted

to them, and to determine how much of the terminal charge claimed was valid, the Court of Appeal held that such a protest even as that goes for nothing. Under every principle of contract recognised by the law the applicants had specially contracted to pay the sum demanded by the Midland Railway Company. Pay they must, and there is an end of it.

It is decisions of this character which the Legislature has to keep before it, when pressed by railway advocates to whittle down the plain meaning of some enactment by provisos which, under a malevolent interpretation, may destroy the whole meaning of it.

There is no intention here of any attempt to review the real controversy between the parties, upon which the applicants may have been either wrong or right. The object in referring to the case is merely to emphasise the excessive difficulties which an applicant encounters at every turn of his litigation. We will not cease to encounter them so long as statute law is allowed to remain in its present state of bewildering confusion, and no steps are taken to ensure its codification or simplification.



## CHAPTER IV.

### UNDUE PREFERENCE.

It seems to be perfectly clear that the Act of 1845 had intended to prevent the granting of undue preference but had signally failed to do so.

In a Scotch case the President of the Court of Session, while himself adopting the narrower opinion of Lord Cranworth in preference to the wider construction which Lord St. Leonards was prepared to give to that Act, said :—

Now, no doubt, the fact of such a construction is to narrow the scope of the statute, and perhaps in some degree to destroy its usefulness. It was in these circumstances that the Railway and Canal Act of 1854 was passed. It was found there was a difficulty in establishing a case under the Act of 1845, because there were so many varying conditions to be fulfilled, trifling enough in themselves, before the section could be enforced, and it was thought proper to impose a further restraint upon such irregularities as arose from the giving of undue preference and a variation in the rates charged to different traders.

In his Lordship's opinion the Legislature in 1845 had desired to ensure equal treatment for all freighters. In his Lordship's opinion they had failed because they had refrained from laying down a broad general principle in

plain unmistakable words, and had fenced around the provisions they did enact with a series of conditions "trifling in themselves" but sufficient to stultify the whole legislation as to equal treatment.

A Parliamentary Committee in 1853 expressed their views to Parliament upon the general duties and obligations of railway companies. It is submitted that the recommendations of the Committee truly represent the law of railway traffic and that it is these which are intended to have been enacted in every railway regulation statute from 1854 onwards. If the decision of a learned judge distinctly clashes with this exposition of railway duty then it is clear that he has allowed himself to be guided by principles at variance with those which the Legislature has endeavoured to enforce.

The Parliamentary Committee of 1853 recommended the passing of a measure to ensure

that every railway company should be compelled to afford to the public, in respect both of goods and of passengers, the full advantage of convenient interchange from one system to another, to afford every class of traffic, including postal communication, just facilities, and to observe all statutory provisions, especially those requiring equal charges under the same circumstances; and that where complaint arises that any company has violated any of these obligations, provision should be made for the hearing and decision of such complaint in open Court, with power to make use of the interference of the Railway Department for the purpose of ascertaining by what specific and detailed arrangements such complaint may be effectually redressed.

This recommendation was embodied in the Railway and Canal Traffic Act, 1854.

The manifest intention of the legislation is to provide

the greatest possible measure of protection to the public compatible with the fullest freedom of action on the part of the railway companies. The legislation is treated by railway advocates in Court as being abnormal, as oppressive to the companies and due to be enforced only when no other construction can be put upon the words of the statute by any effort of ingenuity. Not only so, but they frequently, if not constantly, enlist the sympathies of the Court in their favour. Thus, a decision of the Court of Appeal in the case of the London and India Docks was to the effect that the traffic Acts were not applicable to traffic from private sidings unless there was a distinct enactment in the statute that it was so intended. The Acts, they said, derogated from the rights of railway companies and must be construed strictly. Those who mete out such treatment to be the work of the Legislature overlook the fact that legislation for an abnormal state of affairs must, almost of necessity, be itself abnormal. A position allowing the internal communications of the whole country to be worked for gain by private companies is as abnormal as it can well be; and if the Legislature sanctions a scheme under which the highways of the kingdom are provided by private enterprise, it is obviously its right and duty to safeguard the interest both of the public and of the traders requiring to make use of them.

Before the coming of railways, roads were made and worked for profit by trustees. In the case of road Acts no one would have conceived the idea that trustees might charge less tolls to one person than to another, or charge French fruit coming from Folkestone half the tolls charged

on English fruit coming from Maidstone. But when the Legislature prohibits this in the case of railways and provides legislation as fairly adapted as possible to the exigencies of the case, the companies exclaim against the tyranny to which they are subjected and loudly call on the Courts to have no regard to legislation which a Lord Chief Justice, when administering it, did not hesitate to describe as "revolting".

The provisions of the Act of 1854, as regards undue preference, are contained in section 2, which forbids:

any preference or advantage

to any person or description of traffic

in any respect whatsoever

beyond that which the Railway Commissioners shall consider to be due and reasonable.

The decisions of the Court of Common Pleas to whom jurisdiction was first entrusted, and afterwards of the Railway Commissioners who administered this law from 1874 to 1889, left nothing to be desired. The difficulties then confronting the traders consisted in the practice adopted by the Superior Courts of treating the Railway Commission as an inferior tribunal and of quashing their orders whenever they were brought before them for that purpose. Exceptions to the law of equal treatment had not been then introduced, and the plea of competition, as a justification for infringing the law, was not accepted by the judges of the Court of Common Pleas nor by the earlier Railway Commission.

Between 1873 and 1882 the Courts had made great havoc with railway regulation. A Committee was appointed to inquire into the matter in 1882 and it was

their recommendations which became the statute of 1888. Many traders approached the Committee urging that a law strictly enforcing equal mileage rates was preferable to the uncertainty prevailing when unequal charges were left to the discretion of a tribunal however competent and impartial. The Committee pointed out the obvious objections to this principle. To a very great extent these have been removed by the system of graduated mileage rates invented by Lord Balfour of Burleigh and the late Sir Courtenay Boyle. These, coupled with the separation of terminal and conveyance charges, have to a very great extent put an end to the objections that all traders should be charged "equally" when they are in competition one with another. The case of sugar afforded the illustration selected by the Committee as showing the inadvisability of ordering strictly equal mileage rates. The mode of charging proposed by Lord Balfour and Sir Courtenay and adopted by Parliament in the Provisional Order Acts, disposes to a great extent of the difficulties suggested by the 1882 Committee. According to the present statutory scale the rate authorised for sugar for a distance of 50 miles is 17s.; for a distance of 150 miles it is 33s. This legislative variance of rate seems to afford all the opportunity really required to promote "healthy" competition between traders in the interest of the public.

When any greater modification of mileage rate than this is necessary to enable refiners to compete in any district the principle that manufacturers are entitled to retain the reasonable benefit of their "geographical position" must needs be seriously encroached upon if effect is to be given to it. Could the Committee of 1882 have foreseen



the manner in which the problem of mileage rates has since been dealt with they would most probably have accepted it gratefully as a solution of the conflict of interest they were impressed with. If so, they might have recommended, and the Legislature might probably have enacted more stringent regulations as to equality of treatment and have dispensed with much of the "discretion" which at present makes the application of the law so uncertain a quantity. Now that 4d. per ton per mile for 50 miles and 2'64d. per ton per mile for 150 miles represents equality, no reason remains for not ordering absolutely equal treatment, within these limits, to every one concerned. Apart from questions of bulk or other circumstances directly affecting economy of transit, it should be made compulsory on companies, when they make a reduction in rate to one trader, to make the same comparative reduction to every other trader who desires to compete in the same market. It is this which represents the true interest of the public, and not schemes and devices by which one firm of traders is granted access to a town or district and all others excluded from it to the extent, that is, that railway rates can operate to accomplish this effect.

The development of the plea of competition as between the companies has proved to be the deathblow dealt to the principle of equal treatment. The defence of "competition" was rejected by the Court of Common Pleas and by the former Railway Commission. The present Railway Commission has accepted it, and the law of equal treatment has been annihilated in consequence. If the law of equal treatment is to be subject to the exception of com-

petition between the companies, it is the exception which will predominate and the rule which will be abrogated in every practical instance. Theoretically it may be possible to construct a set of circumstances in which the rule might be imagined to operate more powerfully than the exception, but such imagined circumstances would bear no relation to anything occurring in the actual conduct of business. When considering the equity of allowing a plea of competition between companies to prevail as a justification for preferring one trader to another, it must be borne in mind that it is competition in some shape or form which is the cause of all reductions in rates which have ever been quoted. So long as a given traffic remains in the hands of an individual company, unthreatened by the encroachments of any other, the inducements to diminish rates beyond the proportion fairly due to long distance is reduced to its minimum.

The question of competition has, moreover, another aspect, that of the interest of the shareholder, and it is altogether so important that a separate heading is devoted to it.

Another doctrine, well-nigh as fatal to the law of traffic regulation as that of competition, was introduced by its thin end into the Act of 1888. It is that of "public interest". By the time that a railway tribunal is called upon to make a solid allowance for three such imponderable and intangible ideas as "geographical position," "competition" and "public interest," and weigh them against a trader's recognised right to be accorded equal treatment, it is clear that an impossible task is imposed upon it. What is comparatively equal treatment

in the matter of railway rates under the revised schedules? A board school-boy will answer that question. He is not allowed to leave school till he can do it.

What is "geographical position"? Geographical position is anything that anybody chooses to assert that it is.

In what does the "public interest" consist?

In every conceivable thing that can be stated.

There is some fragment or pretence of "public interest" in everything. If a railway company desires to give preferential rates to B which will close A's works, there is plenty of "public interest" to be found to justify it; if it is A who is to be preferred and it is B's works which are to be closed "public interest" will justify that case as readily and conclusively as the other.

The Liverpool Corn Traders complained that Cardiff was preferentially treated when grain was conveyed 173 miles from Cardiff to Birmingham for 8s. 4d., whilst 12s. 9d. was charged upon the 98 miles from Liverpool, and the Court supported their contention. It was held that there was nothing in the public interest which would justify a rate so preferential. Although it was impossible to ignore the fact that in reality the whole grain traffic from Cardiff to Birmingham was at issue, it was exceedingly difficult to decide what the public interest in such a case might be. The public interest of Liverpool might not be that of Birmingham. As a general rule, it was against public interest that uncertainty should be introduced into trade by frequent or violent or arbitrary changes of the circumstances under which people engaged in business had to carry it on, or that artificial circumstances, which might be created at the will or the caprice,

or for the self-interest of any one man or body of men, and which might be swept out of existence as lightly as they were created should be permitted to interfere with the natural course of trade.

The above is a summary of Mr. Justice Wills' most ably expressed opinion, and the judgment of the Court based upon it was to the effect that the North-Western Company were not justified in preferring either Liverpool or Cardiff in the matter of grain traffic, but must charge comparatively equal rates from both ports to Birmingham.

The law as suggested above, is clear, the figures are calculable; whilst a defence of "public interest" is one which gives the go-by to plain business transactions and exchanges the common-sense of everyday life for the mere speculations of transcendental metaphysics.

The corn traders next complained of preferential rates accorded to Bristol for the traffic to Birmingham as compared with those from Birkenhead. The Great Western Company charged them 11s. 3d. for 98 miles from Birkenhead whilst the rate for 142 miles from Bristol was 7s. 8d. By this time the learned judge had discarded the views which had governed the decision of the Court in the previous case. His Lordship expressed himself

So stated (he said), the case seems to me to be a plain one. The preference is justified. I cannot believe that the Legislature of a country which for nearly fifty years has resolutely discarded every species of protection to the industries of Great Britain ever meant by the recent legislation with which I am now concerned to establish a kind of local protection by which, as between one district and another, the natural competition of trade should be stifled and the interests of the consumer subordinated to those of the manufacturer or merchant.

satisfied by the evidence that Bristol could not compete with Liverpool unless preferential rates were permitted.

The claim of the Liverpool merchants to equal treatment with those of Bristol was accordingly "dismissed with costs". The word "and" in the statute his Lordship changed into "or," so as to permit of a judgment being given in due accordance with the principles of free trade. The conclusion of his Lordship's judgment is as follows:—

If, indeed, the Legislature of this country shall really and in definite language declare its will that this kind of protection shall be enforced, no one will more loyally give effect to that will than myself.

But, seeing that if it be resolved upon there is hardly an industry in the country that will not be affected and probably vexed, harassed and disturbed, that it will check competition and hamper enterprise, that it will probably ruin many individuals, and amount to an economic revolution in much of the business of this country, it is not too much to say, as a matter of construction, that one would expect to find the enactment plain and unmistakable, and not concealed within the folds of a direction to take into consideration, so far as the Court may think reasonable, and in addition to any other consideration affecting the case, whether the lower rate is necessary for securing traffic in the interests of the public *and* whether the inequality cannot be removed without unduly reducing the higher rate. I cannot persuade myself that section 27 sub-section 2 has the meaning sought to be attributed to it, and I believe that I have given full effect to it in the manner in which I have dealt with the present case.

It is the "and" printed in italics which the Court read as "or," because no question arose as to any difficulty in reducing the higher rate. Before passing on, one observation only will be ventured upon.

Section 27 was an innovation of the Act of 1888. The law of equal treatment had been expressed in the



language quoted above and had been enforced from 1854 until his Lordship's judgment in 1893. Section 27 was apparently inserted for the assistance of traders. For want of access to the railway statistics applicants were often hard put to it to prove their case. Sub-section 1 runs:—

Whenever it is shown that any railway company charge the traders in any district lower rates for the same merchandise than they charge to the traders in another district, the burden of proving that such difference in treatment does not amount to an undue preference shall lie on the railway company.

To the trader the original Act of 1854, together with this section, seems to put the law of equal treatment on a sufficiently substantial footing, but with this introduction of "public interest" nothing can be done with it.

It will be noticed that it is a rate of 7s. 8d. for a distance of 142 miles which the railway company, with seemingly ill-advised obstinacy, are struggling to maintain. If the company's 1,800 tons of yearly traffic is not carried at a loss, then the rate of 17s. which the Provisional Order Acts authorise, and which would in most cases be charged on English grain carried that distance, is far too high.

The principle of "geographical position" is made to work as badly in the trader's interest as does that of "public interest".

In the same way that the "necessities of competition" and the "interests of the public" may be made to mean anything which the speaker chooses, black at one time, white at another, so "geographical position" is a mystical term, open to the same infinite range of definition from everything to nothing.

In *Pickering Phipps v. London and North-Western Railway Company* the applicant maintained that "geographical position" meant nearness to his market, and nearness to the iron ore supplies, as balancing the extra distance from the coalfields. The Court disregarded physical nearness to the iron market when the question at issue was the rates to that market; they held that "geographical position" was the determining factor, but that this was in the competing firm's favour inasmuch as they had access to two railways whilst the applicants could only avail themselves of one.

As a result of this decision the applicant, who had recently reopened works previously closed, closed them again, being unable to contend against preferential rates in every direction. Other works on the same branch of railway, whose rates were still more preferential, were also abandoned and the capital invested in the furnaces and buildings lost.

It is under the wording of section 27 of the Act of 1888, quoted above in the judgment of Mr. Justice Wills, that these imaginary defences of preferential treatment take their origin.

It is submitted that the section should be repealed in its entirety, and that for it should be substituted instructions absolutely forbidding preference of any kind and confining the adjudicating tribunal, in cases of inequality of treatment, solely to considerations which bear directly on expense or economy of transit.

## CHAPTER V.

### COMPETITION.

IN the preceding chapter the question of competition was touched upon as affecting the rights of traders to have their traffic forwarded upon the railways of the United Kingdom upon the same terms (reduced to the same standard of comparison) as those upon which the traffic of their competitors and rivals is carried upon the same railway.

If this inherent right had not been challenged by judges and others of the highest intellectual capacity, it would be difficult to imagine upon what grounds it could be argued that railway companies should be entitled to work havoc with the trade of freighters on their railway for the sake of promoting their own pecuniary advantage. The opinion that they are entitled to do so has been argued with the force and consummate ability of Lord Bramwell amongst others. The arguments of those who hold the doctrine at the present day are based upon the assumption that competition between railway companies is vital to their existence. It is submitted for the consideration of the shareholder that the reality is the exact opposite of this theorem.

If railway managers had always been content to allow

traffic to follow its natural course, and had applied the same energy in efforts to develop their own local traffic as they have expended in endeavouring to appropriate that of their neighbours, the ordinary shareholders would be receiving dividends 50 per cent. greater than are paid at present and the stock would be quoted in the same ratio above the current figures. Possibly no one would be prepared to contest this proposition if it were confined to the competition of the past; but still many may be found to maintain that energetic competition is a necessity of the present day.

For twenty years prior to 1883 the net profit on working amounted to about  $4\frac{1}{4}$  per cent. on the capital invested; from that date until now the average dividend, calculated in the same manner, yields, roughly, 1 per cent. less.

There are many causes which contribute to a result so unsatisfactory. Increase in the cost of wages may form an essential item in it; but increasing efficiency in working counteracts this tendency to a large extent, and as regards materials, there would probably be found a great reduction of cost on the whole if means existed for working it out with accuracy.

In 1889 Sir George Findlay published his comments upon the alarming increase of expenditure which had begun to make itself apparent at that date. In his work on the *Management of an English Railway* Sir George, in discussing the question whether the passenger traffic of 1884 was sufficiently remunerative, says:—

It may well be doubted whether, under present circumstances, upon first-class passengers carried long distances by express trains—say between London and Scotland—there is any profit at all.

He continues :—

There seems no reason to doubt that the state of things thus described, so unfavourable from the railway shareholder's point of view, has been brought about chiefly by reason of the lengths to which the companies have gradually proceeded, under the pressure of competition, in making concessions without adequate remuneration for the privileges bestowed.

Since 1884 competition in matters of speed, accommodation, week-end fares and the like has been ever on the increase. As to excessive speeds Sir George Findlay says, in 1889,

These exceptionally high rates of speed add to the cost of working in more ways than one; in fact they have a tendency to increase almost every item of expenditure. In the first place there is a greater wear and tear of the engines and vehicles, and more frequent repairs and replacements become necessary; secondly, the engines must be worked at much higher pressure and be of greater capacity and the increased consumption of fuel is a very serious item. Then, again, to permit of heavy trains being run at such high rates of speed, the permanent way must be proportionately strengthened, and becomes more expensive to provide and maintain in the perfect condition which is essential. It is also in a great measure the high rate of speed at which trains have to be run which necessitates the elaborate and complicated system of signalling and interlocking which has been described.

Every month now we hear of heavier engines, longer runs, more luxurious accommodation.

As regards accommodation all railway managers take an interest in showing how much this has improved in recent years. In 1872 a third-class carriage of the better type weighed ten tons, and was capable of seating fifty passengers; the newer type of carriage would weigh eighteen tons and would be capable of accommodating



seventy passengers. And so with the first class ; the old carriage weighing ten tons would seat thirty-six passengers, the new carriage of eighteen tons will accommodate forty-four passengers only : a sleeping saloon weighing twenty-two and a half tons, and costing £1,300, only contains berths for sixteen individuals.

Following out these considerations by means of elaborate statistics, Sir George arrived at the conclusion that whereas in 1860 the net profit per passenger on the London and North-Western Railway was 41d. first class, and 14d. second class, in 1884 the net profit on first class was 5·71d. and on the second 2d.

Competition has still further developed since 1884, another competitor is demanding a share of the London traffic and for the ordinary daily service to Manchester twelve trains start in the two hours after noon.

It may be said in reply to this that if it pleases the Midland Company to abstract traffic from its neighbours by carrying a third-class passenger in a dining car from Manchester to London at a fare less than it costs them, that is no concern of the trader. This is one of the advantages which the public derive from competition ; the third-class passenger is benefited and the trader is not hurt.

Such a view of "public interest" seems to the trader to be completely erroneous, because it appears to him that unfortunately he is hurt. The loss which the companies make in their eager competition for passengers to the North must be recouped from some other traffic, and some part at least is levied upon the home producer. So long as the ratio of working expenses is increased by

undue facilities accorded to competing passenger traffic the rates charged to the home producer cannot be reduced to the level of those charged upon imported produce, because, if so, the companies would be unable to maintain the comparatively small dividends they are now earning. Loss upon the working of passenger traffic is one of the incidents of competition, and in order to maintain competition, rates, illegal except for this necessity, must be charged on Northamptonshire iron smelters, their businesses ruined and their works closed. This is how "competition" and "public interest" work when put into actual practice. In order that third-class passengers may obtain more than first-class accommodation for their penny, industrial operations are suspended at Wellingborough and the business is transferred from there to Islip. So little doubt have the advocates of the theory of "public interest" and "competition" of the correctness of their views that, at the mere sound of the words, they are prepared to overrule any legislation which accords to a trader comparative equality with his trade rivals. The equality prescribed by statute has some semblance of order: the case law of competition results in nothing but chaos.

The Courts of Law, following Lord Justice Collins, draw a distinction between "healthy" and "unhealthy" competition, but no attempt has been made to draw a line of demarcation between the two. The present writer does not attempt the task, but would venture to suggest one distinguishing test. If the law has to be violated in order that competition may be maintained, that competition may be classed, unhesitatingly, and without more ado, as "unhealthy".

The trader generally sees pretty plainly that trade as a whole is injured when railway companies are allowed to take A's business and give it to B at their own will and pleasure, and in order to suit their own supposed interest. What is not quite so apparent is the loss which the "unhealthy" competitive principle inflicts on the railway shareholder.

If Sir George Findlay is right in imagining that long-distance traffic carried under present conditions means absolute loss on working, it may be asked what is the benefit which the shareholder obtains by increasing his share of it?

Or again, what benefit is it which he derives from carrying cotton and cotton goods between Liverpool and Manchester for less than the cost of working?

The Parliamentary Committee of 1853 alluded specially in their report to the deplorable waste of capital involved in the construction of purely competitive and needless lines of railway. They selected, as a striking example, the particular case of Manchester and Liverpool.

Although, they said, the traffic between these towns was effectively served, first by the Bridgewater Canal, and then by the Manchester and Liverpool Railway, three other competitors had constructed lines of railway for the purpose of obtaining a share in the traffic. Since that time, another competitor, the Manchester Ship Canal, has been added to the number of the competitors at a cost of £16,000,000. The railway companies cannot be blamed for that; all they could do, they did, in order to prevent it. Taking railways only, a capital of £1,500,000 was all that was really necessary to provide for the

traffic between these towns. Instead of one, three railways have been constructed; instead of profit on a capital of £1,500,000 profit has now to be earned sufficient to remunerate the £4,500,000 employed in this construction.

The first step taken, in order to ensure four times the amount of previous profit on the same traffic, was to cut down the rates. Accordingly, the rates on cotton, both raw and manufactured, were gradually reduced by one-third. A 12s. rate became 8s., and it is out of this reduction of 4s. per ton that the railway shareholder has to earn the profit on the £3,000,000 which he spent in order to compete with the £1,500,000 then existing.

The cotton traffic has been the subject of searching investigation, particularly at the Board of Trade Inquiry in 1888-90, and much statistical information is available with regard to it.

The present writer has had occasion to call the attention of the directors and principal officials of the railways concerned to the fact that the whole of this cotton traffic is carried at a loss. His observations have been considered and replied to, but no one has challenged his calculations nor disputed the fact that no profit on working accrues on the traffic in question. The Liverpool and Manchester rates, of course, affect all others within a wide radius, and it is not the Manchester business alone, but the whole cotton traffic of the district which ceases to afford remuneration to the railway shareholder. The volume of raw cotton affected by the successive reductions in rates may be put roundly at 500,000 tons. Thus, the 4s. per ton thrown away in the frenzy of

competition amounts to £100,000 per annum, equal by itself to a 6 per cent. dividend on the sum needed for thirty miles of railway.

Here, then, are two large groups of traffic upon which the effect of competition may be studied by the onlooker.

As regards the passenger traffic to the North, for which five companies are competing by means of excessive luxury in accommodation, Sir George Findlay's opinions and figures will enable shareholders and traders to arrive at a conclusion for themselves.

The enforcement of the law of equal treatment is represented by railway advocates in Court as a most unholy interference with vested commercial interests. Outside the walls of the Court, counsel and managers know perfectly well that the legislative restraints placed upon wild competition by the fact that competitive rates would be claimable also for non-competitive traffic, has been the salvation of the English companies. Now that the companies are under the full control of the Railway Association the theory of competition will still serve to defeat a trader claiming his legal rights in Court, but the reality is rapidly vanishing. The fact that undue preference was established, so early as it was, as a legal maxim has been the main safeguard of the shareholder; the fact that it was not rigidly enforced, and that penalties of £10,000, £20,000 or £100,000 were not laid upon the companies when they infringed it, has lost the shareholders one, or two, or more, per cent. of their dividends.

If, in 1854, the law of undue preference had been made more stringent than it is, and if half a dozen companies when endeavouring to evade it, as they did, had been fined



£100,000 each, as they were not, another £10,000,000 sterling would have been added to the present £40,000,000 of net revenue, and capital by the hundred million would not have been wasted in providing duplicate and triplicate lines of communication unnecessarily.

It will be interesting to follow the results of the most recent piece of competitive capital expenditure, namely, the construction of the Fishguard-Rosslare route. Some £3,000,000 sterling, perhaps more, have been spent in providing a new route whereby traffic may be taken from the North-Western Holyhead-Dublin route which it previously followed. Some of the tourist rates have been settled by the Railway Commissioners sitting in Dublin and have been based upon the supposition that increased facilities will induce an increased tourist traffic. The "old pig boats" (so opposing counsel are pleased to describe the Milford-Waterford service) have been supplemented by three "magnificent turbine steamers" and an additional special service of trains is run between Paddington and Fishguard. By Order of the Court the standard fare of 26s. 3d. to Arklow (the equidistant point) is reduced to 24s. 4d. If the expenses of one passenger route may be taken to amount to the ordinary average, 62 per cent. of the receipts, the expenses of two routes would be increased in the proportion of 124 per cent. of 26s. 3d. and 134 per cent. of 24s. 4d.

Mr. Justice Madden thinks that lower rates and improved facilities will increase the traffic attracted by "Glendalough's gloomy wave and Avoca's placid waters". Combined with extensive advertising, no doubt it will, and, if so, the Dublin, Wicklow and Wexford Railway will be a

little less worse off than formerly. But if the new traffic only comes from South Wales, or if it is merely traffic diverted from Killarney, it will go but a little way to meet the enormously increased expenditure. It comes very nearly to this, that in order to make the same profit on working as formerly, 134 tourists must now start from either Paddington or Euston, where 62 started from Euston formerly. With this accession of traffic the aggregate profit on working would remain as it was before, but in order that the shareholders may not suffer, further traffic has to provide the interest on the new capital expended. This will require 150,000 ordinary long-distance passengers to contribute the passenger quota of the outlay—500 new passengers for every working day. The same considerations apply to goods traffic. It does not matter to merchandise whether it travels by “pig boats” or “turbine steamers,” and it seems scarcely credible that goods and cattle traffic can increase in proportion to the increased outlay.

By section 32 of Traffic Act, 1888, the Board of Trade are authorised to ask of any railway company such statistics as they may require. If they would make a new departure in this instance and require the Great Western and North-Western Companies to supply them, year by year, with statistical information in respect of cross-channel traffic to the south of Ireland, the public and the shareholders might be afforded a lesson of inestimable value. If it should be shown that the real increase of traffic is comparatively small and that dividends are paid on the new capital merely by diverting them from the pockets of the North-Western Company,

and that consequently a substantial portion of the recent outlay represents a mere sterilisation of capital, the shareholding public might awake to the fact that legislative regulation is very far indeed from being derogatory to their rights or injurious to their commercial interests. It would be the shareholder then who would clamour for the enforcement of the regulation Acts more loudly than the trader, and who would wish to see regulation applied to capital outlay as well as to working and revenue.

## CHAPTER VI.

### THROUGH RATES.

THE Railway Traffic Act, 1854, prescribes that all railway companies "according to their respective powers shall afford all reasonable facilities for the receiving, forwarding and delivering of traffic," and the Act, 1873, under which the first Railway Commission was instituted, provides that "such facilities" shall include the granting of "through rates" upon the application of any railway company.

This very salutary and important measure was apparently intended in the first instance as a benefit to the railway companies themselves, and was put into operation mainly when some new route was opened by which it was sought to divert traffic from its existing channel.

The Act, in giving power to order a through rate in spite of the objections of the company called upon to part with some portion of the traffic under its control, stipulated that the through rate should be applied for "in the interest of the public". If the interest of the public was already sufficiently provided for by the existing route, there was no equity in compelling a company to forego any portion of its profits in favour of an invader who had nothing but its own interest to serve.

The Parliamentary Committee of 1882 recommended that "through rates" should be ordered on the application of traders and in the Act of 1888 effect is given to this recommendation.

The amendment is sought to be carried out by the mere insertion of the words, "or at the request of any person interested in through traffic," but in this case of a trader it is stipulated that the applicant must first apply to the Board of Trade under the "conciliation clause".

Parliament could not be expected to foresee and provide against the mass of technical difficulties which an applicant has now to encounter when he sets out upon a "through-rate" application.

The companies' advisers have now discovered how to pile these up in such formidable array that, with the exception of the first application made by the Chatterley Whitfield Collieries, no instance is recorded of an application made by a trader being successful. Some technical objection, devoid of any scintilla of merit, has been urged upon the Court as a fatal bar to its jurisdiction and the Court has yielded.

Or rather, a dozen or so of "frivolous and vexatious" objections are put forward on every occasion, and one of them gets home in connection with the details of some point of working with which the members of the Court may happen to be unfamiliar.

When companies were first empowered to become carriers on their own lines they were authorised to make such reasonable charges as they thought fit, not exceeding the rates allowed by their special Acts. The charges now ordinarily levied are brought up to the companies'



full maximum, and apparently there is no ready means of testing the "reasonableness" of such a charge. Possibly some means of doing so may be provided in the next amending Act: meantime, when traffic passes over the lines of two railway companies, the Act has the appearance of having provided a remedy for excessive charges within the companies' maximum.

Before discussing the manner in which the law as to "through rates" has been rendered more or less abortive, attention is called to two main obstacles placed, unintentionally no doubt, in the path of the trader.

When railway companies alone were in a position to make through-rate applications, it was reasonable, as pointed out above, that some interest, other than their own, should concur in making it desirable that traffic should be taken from one route and put upon another. There is nothing in the letter or spirit of railway law which should allow the interference of one company with another company's traffic if the public are equally well served without it. But if a trader is prevented altogether from sending traffic between two places because the companies owning the route will not agree to quote reasonable rates to him, it is his own statutory right to reasonable facilities which is invaded. The "interest of the public" has no bearing upon the enforcement of an individual trader's statutory right, but if it had, the "interest of the public" in having traffic conveyed could hardly be called in question in any other proceeding than the interpretation of a railway statute. In that case arguments, captivating to the forensic mind, are advanced to prove that as the words are there they are intended to

have some special meaning ; there are no special circumstances attributable to the case before Court ; the applicant has not shown that the " public " is " interested " in obtaining his goods in preference to those of anybody else ; the applicant therefore must be non-suited.

All this is very gravely stated, and very gravely listened to, and, as will be seen by the cases quoted, there is great probability that the Court will defer to it.

This pitfall, if it was not intended for such, the Legislature should remove at an early opportunity.

A trader, making application for through rates, is required by the section to make previous application to the Board of Trade. The same routine is ordered in the case of a complaint of increased rates. These compulsory applications to the Board of Trade are productive of confusion, expense and delay, and consequently serve the purpose for which it is obvious that the companies intended them. In no instance have they been of the slightest advantage to the trader. When complaint is made to the Board of Trade the companies keep aloof altogether ; they afford no information ; they give no explanation ; but should it happen that the trader amends his claim somewhat on making application to the Railway Commission there is a fine opportunity for pleading that the matter has not been before the Board of Trade and consequently that the Commissioners have no power to deal with it. The Board of Trade in their formal reports to Parliament explain that, in their opinion, such matters are too high for them ; when the indispensable complaint is made, a formal correspondence ensues, meaning nothing,

and not intended to mean anything, and then after due delay, the applicant is informed that the dilatory ceremonies being at length complete, he is at liberty to proceed as though nothing had happened. The trader has been delayed for three months and has been put to an additional expense of £25 or £50. The delay and expense would be greater still if the trader is not forewarned of the total inutility of the sham procedure and attempts to deal with it in real sober earnest.

When the Legislature are considering the next amending Act their attention will be called to the manner in which those who were drafting the 1888 Act were induced to insert these embarrassing provisions and to the manner in which the result is rendered nugatory after all the prescribed steps have been carefully taken. In order to make things equal, when compulsion is put upon traders, compulsion should also be put upon the companies and upon the Board of Trade as well.

The position is somewhat unique in the annals of formality, that a suitor should be compelled to attend upon a tribunal which has no power to assist him, which need not hear him, and may dismiss him and his application without paying any attention to either.

The intention of the Legislature seems to have been good; the defect lies in the expression of it. As in this instance, so elsewhere, possibly everywhere, the Legislature hesitates to issue commands, and uses instead a sort of deprecatory language of request, leaving to the companies the full option to do, in every respect, exactly what they think best suited to their managers' interests. Coming back from generalities to the point under discus-

sion, it is submitted that the procedure hinted at by the Act might well be made an excellent one.

When through rates are refused the trader should be required to take his case to the Board of Trade, but when it is there, something should be done with it. The companies should at least be required to answer it and to state the facts upon which they base their refusal, and to these they should be confined if conciliation fails and subsequent application to the Railway Commission becomes necessary. If the facts are against them, and the objections are merely of the frivolous and vexatious character of those indicated below, the Board of Trade should be authorised to strike them out. *Ex. gra.*: If the objection should be made that there are no interchange sidings at the junction between the lines of the two companies one of the railway inspectors of the Board of Trade should be instructed to report as to actual difficulty in working. If it should turn out that there is none at all, the Board of Trade should have authority to strike out the objection, once for all, and order the company to pay the costs unnecessarily incurred in the inquiry. If some additional trouble involving expense would really be necessitated in consequence of the point of interchange chosen, the adviser of the Board of Trade should state what, in his opinion, would constitute the most appropriate mode of working the traffic and put a money value upon it. By this, or some such similar means, the procedure ordered by the Legislature would cease to be merely a costly farce but would possess much real administrative value.

As it is, the Act, abounding as it does with the very



best of intentions, requires the objecting company, if they refuse the rate, to state their objections and the ground of them. In default of their doing so the rate applied for is to come into operation. They do not do so, but for all that the statute orders it, the rates applied for do not come into operation. What the Act obviously means is, that when a trader asks for a rate, and states, as he always does, the grounds upon which he bases it, the railway managers should be equally explicit in reply and state in commercial language what objection there may be to adopting that route for traffic or why they consider the rate proposed insufficient. The applicant will then be in a position to know whether or not he would be sufficiently justified in pressing his claim or would be better advised in withdrawing it. Moreover, it would be but reasonably respectful to the Railway Commission to take steps that would prevent unfounded claims being brought before them, since incessant rejection of the trader's applications would tend to discredit the tribunal and render it unpopular however much it might administer the spirit of the Acts with unerring impartiality. As it is, the stock answer is formulated that "the proposed rate is too low". It would seem that this is the objection itself, and when the Act requires the "grounds of objection" to be stated in addition, what is meant is that some reason should be given in explanation or justification of that general assertion. This it is which is never done. The companies treat a statement of fact as a premature disclosure of their intended evidence and say no word as to their real objection until the case is before the Court and the applicant



coming from a distance has no ready means of answering it.

When formal application for a through rate is filed in the Railway Commission Court by a trader the standard answer is made up of objections similar to the following:—

1. The rates applied for are not proposed in the interest of the public.
2. The Court has no jurisdiction to grant rates from or to private sidings.
3. There is a through rate already in existence.
4. There are no exchange sidings at one of the proposed junctions.
5. The rates proposed are too low.

All these are available for every application; others, of corresponding importance, are based upon the facts of the particular case.

However “frivolous and vexatious” all this may seem to the trader, who knows the facts, and to his advisers, who think they know the law, it constantly happens that the Court is inclined to attribute ponderable weight to one of them, and to refuse the application in consequence. For these causes, or for others, it has only happened once, since the trader was invested nineteen years ago with the right to demand through rates, that his demand has not been refused on general principles.

## CHAPTER VII.

### LONDON DOCKS CASES.

THE story of the successive applications of the London and India Docks will be found to be brimful of interest and instruction to any one concerned in the traffic management of railways or in the working of the judicial machinery by which traffic Acts are to be administered.

No one can follow this series of applications and appeals, extending over a period of some four years, without being convinced that the whole law of traffic requires complete remodelling. The Court, at the outset, expressed a strong opinion that the full merits of the case were with the Docks Company, and after the last of the long series of decisions against the applicants, Parliament intervened and passed a short Act, making the law the opposite of that which the Court of Appeal had declared it to be. In the opinion of the Courts the facts were in favour of the applicants; in the opinion of the Legislature the law was, or ought to have been, in their favour; the action of the companies was such as to imperil the very existence of the port of London; but in the chaotic state of the traffic Acts redress was refused at every turn. The grievance of the Docks Company, and of the shippers

using them, was that the railway companies serving the docks insisted on charging rates including cartage, although, of course, no cartage service was performed by them.

By agreement amongst the railway companies having their termini in London, the collected and delivered rates are the same from every London station throughout an area agreed upon, which extends as far as Stroud Green on the north, Forest Gate and Gallions on the east, Wandsworth Road on the south and Ladbroke Grove on the west, thus surrounding and enveloping, but at the same time excluding, the Victoria and Albert Docks, and others on the north side of the river. Although the docks themselves are kept beyond the pale of this artificial boundary the dock stations of the different railway companies, whether situated immediately within or immediately without the dock premises, are brought within the area. Taking the case of tea as an example: upon tea forwarded from any station, inside or outside the docks, 5s. per ton would be allowed as rebate from the carted rate charged; upon all tea loaded directly into railway waggons by the Docks Company the same rate would be charged, but no rebate would be allowed.

This is obviously an extremely flagrant case of unduly preferring the traffic of the Railway Company to the traffic of the Docks Company, but nominally the Docks Company have no traffic; they are not freighters, and although they are most seriously injured and handicapped by having a toll of 5s. per ton imposed on all this traffic, and of tolls between 1s. 9d. and 6s. 8d. per ton on all other traffic, the traffic, as before said, was not theirs, and they could

not pose as applicants complaining of undue preference in respect of it.

Here, certainly, is a serious defect in the Act. A dock company may be injured to the extent of its very existence by the railway charges on the goods landed at their wharves and have no *locus standi* in any Court to seek a remedy.

The Act, however, allows "any person interested" to make application for a through rate, and this remedy (were it not invariably refused on the grounds mentioned) might be frequently available when persons who do not pay freight are none the less vitally interested in the fate in store for the traffic.

*Case No. 1.*—The Docks Company, accordingly, made application for through rates to various Midland stations based on the rates charged from the Midland station in the docks, with the cartage allowances deducted. The traffic from the Midland station and the traffic from the other parts of the docks is all marshalled in the same set of sidings and both sets of traffic commence their journey from that particular point. Upon the merits of the case the Court expressed an opinion that they were substantially with the applicants.

Two technical points raised by the defence gave rise to more difficulty. It was contended, first, that the applicants had no interest in the through rates applied for and were not "any person interested in through traffic" within the meaning of the section. Evidence was given to the effect that the rebate allowance caused a large volume of traffic to be discharged over-side and landed at other riverside wharves and stations, to the pecuniary

detriment of the Docks Company. The Court attached more importance to the objection that the proposed rates were not a "reasonable facility" "in the interest of the public". Mr. Justice Wright, in giving the decision of the Court, said that although it appeared that the applicants were entitled to succeed, still the Court were not prepared to make any order on that occasion, since, if they did, it might well be that the charge to the public might continue more or less the same, and the Docks Company might be enabled to increase their own charges by the amount of the deduction granted. His Lordship suggested that the application should be renewed in a form which would give the Court jurisdiction to superintend the working of any order made by them. This result might be obtained if in a future application some traders were joined who would be interested in seeing that the public obtained the full benefit of any reduction of rates ordered. Or, again, the Docks Company, in the capacity of owners of railway lines and rolling stock, might come before the Court as a railway company, and, in that case, if charges were increased, they might be reduced by the Court under the authority given them as to increased rates by the traffic Acts.

Under these circumstances the Court refused the order applied for, and in the events that followed it was never made at all. The application was made as much in the interest of the public as in that of the Docks Company; much more so, indeed, but, in the "interest of the public," the public were required to continue to pay to the different railway companies an average of, say, 4s. per ton on all traffic landed at the London Docks and sent forward thence



by rail. The companies rendered no service of any kind whatever in return for this charge, and made no pretence of doing so.

The question of a company's right to compel the public to pay for cartage under all circumstances is discussed in the chapter on cartage charges; here it is merely pointed out that the "interest of the public" is judicially held to lie in their continuing to pay 4s. per ton on some 250,000 tons of annual traffic say, roundly, £50,000 per annum which the Court saw, clearly enough, was illegally charged to them.

These observations are not intended by way of criticism on the judgment of the Court. Mr. Justice Wright, in a decision overruled by more recent decisions of the same Court, has declared the law to be that railway companies may not charge for cartage when they do not perform the service. In this case the traffic was loaded into trucks from the Docks Company's warehouses, no cartage was performed by anybody, and yet "in the interest of the public" the Court refused to order them to discontinue the practice of making a cartage charge. The reason for refusing it was stated to be founded on the conceivable possibility of the Docks Company adding the amount to their own charges. If they were lawfully entitled to do so, why should they not? The Docks Company were authorised to make certain wharfage charges; their enterprise, of the utmost value to London and to trade generally, was altogether unremunerative to the shareholders. Suppose, then, although there were no grounds for the anticipation, that the Docks Company, who were not charging the full dues authorised, did actually add a

few pence to wharfage charges, admittedly inadequate for their remuneration, what has that to do with a Court appointed to regulate the charges on railways?

The only matter before the Court was the imposition by the railway companies of absolutely illegal charges, of from 3s. 9d. to 6s. 8d. per ton. The Act requiring the Court to remedy this (this is the only point endeavoured to be enforced at this moment) encumbers the plain provisions of the statute by adding words, "the interest of the public," which have no sensible meaning in connection with the subject to which they are appended. If the Legislature allows itself to be over-persuaded and to continue to add meaningless or apparently trifling restrictions to their provisions, the result will always continue to be what it is and always has been. With one hand the trader is given what is intended to be his strict equitable right, no particle more; with the other hand what is given is all taken away again and much more with it. Here is the case of traffic starting from the Exchange sidings of the Victoria Docks; one truck has been loaded by the Railway Company, the next truck has been loaded by the Docks Company; in other respects the traffic conditions of the two are identical, but the consignees have to pay some 20s. more on the goods in the one truck than on those in the other. The mode provided for adjusting this anomaly is that the Court should order the same through rates to be applied to both. There would have been no scrap of difficulty or trouble about this had it not been for the "interest of the public" unreflectingly inserted in the section. In response to the argument that as the words are there the section must be construed in some manner

different to that in which it otherwise would have been, the Court embarrass themselves with the duty of endeavouring to follow up and control the effects of the order which, as they admit, they are called upon to make. A real evil is to remain unremedied lest some imaginary grievance should possibly be found to take its place.

Before passing on to the next step in this "Through Rate" story, a moment's consideration may be given to the question as to what ought to be done when it is shown that railway companies have been making illegal charges intentionally.

For some twenty years, notwithstanding all the protests of the Docks Company and of their efforts to prevent it, the companies have been charging the public £50,000 a year for cartage on goods when no cartage was done or needed.

Would it be unreasonable in an amending Act, when it is shown that illegal charges such as these have been knowingly made, for the Attorney-General to be empowered to obtain a refund? The proceeds might be well employed in preventing infringements of the traffic Acts for the future and in providing for the cost of keeping the Act continually amended *pari passu* with the decisions of the Courts calling attention to their inadequacy.

*Case No. 2.*—In deference to the wishes of the Court the Docks Company commenced to prepare their application all over again.

The Mansion House Association were willing to join in a new application as representing the "interest of the public" generally in the matter of railway rates,

stipulating with the Docks Company that their charges should not be increased in the event of the success of the joint application.

The precaution was altogether superfluous, because neither that nor any other application had any, the remotest prospect of being successful. When one imaginary difficulty was set at rest another, like the ever-renewed heads of the hydra of old, immediately took the place of it. The Legislature, it seemed to be thought, had expressly intended that this should be.

The Railway Commission refused a hearing to this joint application.

They said that their former judgment had been misunderstood. It was a spoken, not a written judgment. Although at the beginning they intended to prescribe a joint application, they had altered their opinion during the delivery of the judgment and the latter part suggesting that the Docks Company should apply as a railway company was intended in substitution for and not as an alternative to the earlier part suggesting the joining of a trader.

You cannot argue with the master of ten legions.

The Docks Company considered they had no alternative but to frame their application as the Court desired.

The Mansion House Association had had to go through the idle ceremony of a complaint to the Board of Trade, all the trouble and expenses of two sets of applicants were precisely the same as though the case had been actually heard, and the public, in their own supposed interest, continued to pay overcharges at the rate of £50,000 per annum until a new case could be brought before the Court once more.

*Case No. 3.*—This case also the Court declined to hear. The railway defendants objected that the Docks Company was not a railway company, and in this instance they were probably entirely in the right. The Docks Company knew perfectly well that they had no *prima facie* pretence of being a railway company but thought that with three undetermined applications before them the Railway Commissioners would hear the case on the merits and give judgment on all three alternatives, as they might well have done.

The Court decided that the Docks Company was a railway company but refused to order the proposed rates pending the defendants' appeal to the Court of Appeal. This was manifestly a foregone conclusion. The Court decided against the Docks Company instantaneously, and another year's trouble, expense and overcharge were wasted, and nothing at all had been done.

*Case No. 4.*—The West India Docks Company were the owners of a railway with full statutory powers. Their railway was connected with the lines of the Great Eastern Company, who worked the traffic from the docks to the West India Exchange sidings, whence it was taken away by the different companies.

The Docks Company prepared their formal application and came before the Railway Commissioners once more, having apparently exhausted every technical objection that could be raised against them. Not so! Technical objections are of mushroom growth, and a fieldful of them can spring up in a night-time. Between the end of the applicants' railway and the Exchange sidings there was about 100 yards of Great Eastern Railway. In deference



to the argument of railway counsel, that traffic could not be conveniently exchanged at the junction of the applicants' line with that of the Great Eastern Company, although inconveniently it could ; that the Great Eastern could not be compelled to do what was inconvenient ; that the Great Eastern could not be compelled to come over the applicants' line for 100 yards and fetch traffic from their sidings ; that the Great Eastern Company could not be compelled to allow the applicants' engines to run over the 100 yards of their railway ; that various statutory agreements providing for due interchange were inapplicable to the present altered circumstances ; that consequently the Court could not compel the Great Eastern Company either to receive or deliver any traffic from or to the West India Docks although the lines of railway were continuous ; and lastly, that if they had no power to compel the railway company to receive traffic, they had no power to order through rates, the Court dismissed this application also.

All these were questions of law and the applicants appealed to the Court of Appeal. There the case was given against them on grounds which would suffice for the rejection of any and every through rate application a trader would ever want to bring.

The words of the statute are :—

Every railway company shall according to its powers afford every facility for the receiving, forwarding and delivering of traffic : And whereas it is expedient to explain and amend the said enactment : Be it therefore enacted, that the said facilities to be so afforded are hereby declared to include the forwarding of through traffic at through rates.

The Court of Appeal did not trouble themselves to un-

ravel any of the tangled intricacies submitted to them, but lifting high the sword of justice they severed the whole Gordian knot with one fell stroke and did away at once with all applications, with the Railway Commission, with all the traffic Acts and with everything belonging to them. The traffic Acts, they said, were in derogation of the rights of railway companies; they must therefore be construed strictly: they did not specifically mention private sidings, therefore they did not apply to them.

There is probably not one application in a hundred that deals with station to station traffic, and as everything else was covered by this decision it was necessary for the Legislature to deal with the question promptly. Accordingly in the next session of Parliament the "Railways (Private Sidings) Act, 1904," was passed altering the law as laid down in this, and, to some extent, in other cases.

However, with this overwhelming decision against them, the Docks Company, pertinacious as they were, gave up the struggle. They, or their allies, had made three applications to the Board of Trade, five applications (one not heard) to the Railway Commission and had been twice to the Court of Appeal. They had been entirely unable to have their case heard on its merits, but from beginning to end had been met with technical, and as they thought, frivolous objections, every one of which, however, was decided against them until the climax came, and they were told that as persons who merely despatched traffic from sidings they and their case did not come under the traffic Acts at all.

It is proposed to add a few words of comment on

“Reasonable Facilities” in the chapter with that heading.

The main object in telling the story of the London Docks litigation at such length is to call attention to the manner in which the enforcement of the rights given to him by the traffic Acts is made well-nigh impossible for an ordinary trader.

When Parliament is considering the next amendment of the traffic Acts they should have a report before them, explaining in full detail what was really done under this series of cases. If they should find that the real point at issue was whether the railway companies serving the London Docks should charge £50,000 per annum for cartage which they did not perform and which was not performed at all, and that the manner in which their repeated applications to the Court were rejected and defeated is here truly and faithfully stated, then, if they find that this is so, they will probably listen to suggestions made to ensure the enforcement of their will for the future, of a character entirely different to the mild sanctions which up to the present time have had no effect whatever.

If it were said that the whole mass of traffic Acts is worth no more than so much waste paper it might be thought that the statement was an exaggeration and that such language is discourteous and intemperate. Perhaps it would be so.

But if Parliament wishes to know what the value of the traffic Acts really amounts to, as they now stand in their chaotic confusion, how they are administered and what protection they afford to a trader relying on them, a study of those London Dock cases would go a long way

towards ascertaining the value of existing legislation and inducing the conviction that a firmer tone and more vigorous measures than those hitherto adopted are necessary if any tangible value is to attach to future amendment.

## CHAPTER VIII.

### PREFERENCE OF FOREIGN MERCHANDISE.

THE Select Committee which sat in 1882 reported that serious complaints had been made to them of the preference given to foreign imports. They say :—

Farmers complain that imported agricultural produce is given a bounty over home produce by being carried at a lower rate; that foreign corn and meat are carried from Liverpool to London for less than English corn and meat; that American cattle are conveyed from Glasgow to London for less than Scotch cattle; that cattle landed at Newcastle are carried inland for less than cattle reared in Northumberland and Durham; that foreign fruit and hops are carried from Boulogne or Flushing to London for less than fruit and hops from Ashford or Sittingbourne. Wire manufacturers complain that Belgian wire and other goods are brought from Belgium to Birmingham for less than similar goods are charged from Birmingham to London. Makers of chemicals complain that the coal which they use is made to pay higher rates than the coal sent past their works to Liverpool for exportation to their foreign rivals; and Limerick complains that foreign bacon and provisions are carried from Liverpool to Limerick at much less rates than is charged for Limerick bacon over the same route to the same port. Bradford complains that the export trade from both Manchester and Bradford enjoys rates which are preferential as compared with those for the home consumption trade. In short, the complaint is frequently heard that railway companies prejudice home producers by low import and export rates.

Your Committee think that many of these differential charges afford substantial ground for complaint.



The Committee then expressed the difficulty they felt (since overcome) of comparing long and short distance rates. They had many other matters to attend to and did not closely follow out this question for which the methods available for a Parliamentary Committee are ill adapted. A standing obstacle in the way of arriving at the truth, or at the slightest approximation to it, an obstacle almost wholly unsurmountable in nearly every instance, consists in the fact that all means of evidence and all expert knowledge are upon the side of the railway companies. A trading witness will present himself, at no one's solicitation but his own, to give evidence of the fact that some home rate for meat may be 70s. and some imported rate is 45s. That is all he knows, and in his simple ignorance of everything connected with the compilation of railway rates and charges he considers that this bare statement of fact is all that is needed to substantiate his case. To the first question put to him by an expert, he can find no answer, and after two or three more his case breaks down utterly, although, really and truly, all the right may be upon his side. There is no exception to this, unless the trader has made a special study of transit questions and has taken on, to some extent, the character of an expert. After the trading witnesses have been discomfited by expert cross-examination, the able railway officials, deeply versed in principles and detail, come, one after another, and state the railway aspect of the impugned transactions in their usual powerful manner. If there is no equal authority present representing the other side, and it is extremely seldom that there could be, the railway case appears to be alto-

gether unanswered, as it is, and completely unanswerable, as it is not. The 1882 Committee had no reasonable means of arriving at any definite conclusion on these bewildering problems of transit economics. They were sufficiently experienced in the economics of business to note that differential rates on imported foreign produce, differential rates on exported home produce, and differential rates in respect of home competition raised three totally distinct issues. The Act of 1888, based on their recommendations, deals categorically with the first issue only. Section 27 of that Act has been referred to in the chapters on Undue Preference and on Competition. It is claimed by railway advocates that this section permits the exigencies of competition to be taken into account by the Railway Commission when deciding whether "preference" is "undue" or otherwise. It may be so; but it is far from clear that this is what is meant by the words as drafted. "Competition" is not referred to by that name, but if it be taken for granted that competition was meant, it is still not allowed to be an answer to a complaint of preference of foreign imports. This is made distinctly clear by the proviso, which runs thus:—

Provided that no railway company shall make, nor shall the Court, or the Commissioners, sanction any difference in the tolls, rates or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services.

The trader then takes the effect of the whole section to amount to this: That inasmuch as it has been doubted whether competition ought to afford any answer to a complaint of undue preference the Legislature has felt

unable to say that this can never be so, and has left it to the Commissioners to decide, in every case, whether so clear a necessity has been made out for it, as to justify the setting aside of the general provisions of the statute as to preference. But under no circumstances whatever are foreign imports to be preferred to home produce when the circumstances are such as to bring them into direct competition. It cannot be denied that the language of the section is singularly ill chosen. Having no inherent sense of its own, it is open to any interpretation possible. So, from the standpoint opposed to that of the trader, it is construed to mean that the faintest scintilla of evidence, the merest suggestion that railway competitive interests may be involved, suffices to make preference "due". Imported traffic is essentially competitive, and according to the above construction preferential rates in its favour would always be justifiable were it not for the "proviso". That is disposed of as easily as the rule. Home produce, from the very nature of things, is usually despatched in comparatively small quantities; it is, as it were, retail traffic. Foreign traffic arrives at a port in quantities which may be described as wholesale. Accordingly, it is argued, and the argument never fails to be accepted, that the circumstances of bulk are such that the two traffics under comparison are neither the "same" nor "similar". It is only in railway controversies that the provisions of the Legislature are treated with such scornful contempt. In any other matter than railway traffic it would be assumed that the members of the Legislature were gifted with intelligence and knowledge of the world sufficient to know that imported produce arrives under circumstances

of bulk and packing different from those of home produce, and if these were the circumstances under which the proviso is not to apply, there are none in which it would.

It is submitted that "similar" is not a word employed in mere redundancy and having the identical meaning of "same". If foreign hops and English hops were both conveyed from Folkestone to London the circumstances would be the "same"; if English hops were conveyed from Ashford to London the circumstances would be "similar," and the same reduction from the maximum rates should be made for English produce as is made for the foreign. If hops were sent from Ashford to Maidstone, the circumstances would be different and the rule would not apply. Whether foreign agricultural produce is preferred to home produce was a question referred to a Committee presided over by Earl Jersey and of which the general managers of the London and South-Western and Great Eastern Railways were members. Sir Charles Owens and Mr. Gooday appear to have had little difficulty in persuading their less expert colleagues that competition, with or without difference in circumstances, would justify any difference in rate whatever. There is no need to know what the rates complained of may be, nor what may be the difference between them. The companies have only to answer that there is competition and that there are differences in circumstances; then any difference in rate is justified; there is no possibility of a rate on imported produce being preferential whatever the circumstances. The majority of the Committee accordingly report that preferences exist, but that, in their opinion, considerations of this character justify them. Everybody knew that this was



the companies' answer before ever the Committee was appointed, and agriculturists complain, not without some reason, that they should have been put to the trouble and expense of giving evidence, if all they were to say was to be swept aside in favour of such a stock of time-worn platitudes.

The present writer was instructed on behalf of the Central and Associated Chambers of Agriculture to give evidence before the Committee, comparing in detail some of the principal preferential rates complained of and putting an approximate value upon the differences in circumstances attending them. This he did; other witnesses also gave valuable and interesting information, all of which was taken to be of no account when the railway views as to competition had once been listened to and adopted. The Chamber of Agriculture was desirous that the facts as to preference, as presented to Earl Jersey's Committee, should be made widely known to agriculturists, and with this view they had them published in a pamphlet, "Agriculture and Railway Rates," which may be obtained for 1s. on application at the offices in Orchard Street, Westminster. The pamphlet deals with the evidence relating to hops, grain, potatoes, hay, straw, meat and fruit, and shows that, even according to the railway methods of valuing bulk, long distance and the like, the railway companies in Great Britain charge upon home agricultural produce rates which are *comparatively* the double of those charged upon imported produce.

Agricultural produce was alone in question at the time, but what is said about meat and grain applies with equal force to hardware and chemicals. If manufacturers would trouble themselves to note what is done and what is argued



with respect to agricultural rates they would meet with many illustrative cases having a direct bearing on the transit charges affecting their own trades.

The Departmental Committee was appointed by the Earl of Onslow in the early part of the year 1904; as the agriculturists required some time to prepare their case, the sittings were adjourned until after the vacation. In the meantime the railway companies availed themselves of the opportunity to lay their views of the case before the public. They did so in six long articles published in the *Times* and headed "Railways and their Rates". The first two articles do not deal with facts, but advance abstract arguments to prove that no such thing exists in railway management as a genuine grievance of any kind; that there are no anomalies, no preferences, no prejudice, no unfair conditions whatever; and that assertions to the contrary are made only by ignorant, prejudiced and unscrupulous agitators who have their own ends to serve in doing so. The Legislature is seriously blamed for listening to evidence other than that of railway managers and for being foolish enough to pass measures (meaning the Act of 1888) "for the protection of the cabbages grown on the Lees at Folkestone". In a more recent pamphlet Mr. Lloyd-George is severely taken to task and "reminded" that his conduct in saying that owner's risk conditions are unfair makes him unworthy to occupy the post fitted by his more able predecessors. Some paragraphs referring to Mr. Lloyd-George are quoted in the chapter on Owner's Risk.

In the same arrogant and flippant manner, of which the quotations are a sample, the writer deals in the next

four articles with specific instances of rates complained of as preferential. In respect of these the whole armoury of competition, public interest, bulk and so on, is paraded (of course in general terms only) in reply, and is assumed to provide a final and conclusive answer.

As regards all the principal of the rates mentioned, detailed calculations of cost were laid before the Committee, and it was shown that the conditions under which foreign traffic is conveyed are, on the whole, far more costly to the companies than are the primitive services afforded to agriculturists at so-called "road-side" stations. The effect of the evidence adduced to Earl Jersey's Committee is restated in untechnical language in the pamphlet on "Agriculture and Railway Rates" which is intended to serve, in part, as a reply to the *Times* article.

It is not desired to repeat the arguments here.

In another book, written by the same railway apologist, the author dilates upon the great encouragement given to the French potato industry by the rates and traffic facilities placed at the disposal of French growers by our southern railway companies. What with the information supplied to Mr. Pratt for his book, the evidence given to Earl Jersey's Committee, the case of the Lincolnshire potato growers in the Railway Commission, and the statistics published by the Board of Agriculture, a fairly vivid picture can be presented of the effect of prejudicial railway rates on English agriculture. It may be that manufacturers will think that potato rates are no concern of theirs; but here is a case where the traffic is forwarded by the thousands of tons, and where by an

unusual concurrence of circumstances, the effect of the difference in the treatment measured out to English produce and to French produce can be traced with more certainty than is ordinarily possible.

The manufacturer can see what happens in the case of agriculture, and he can form his own opinion as to whether similar results would follow similar treatment of the traffic in which he himself is directly interested.

This may perhaps be the place to pause for a moment to observe that, when it is desired to disregard the statute law requiring all traffic to be treated equally, the all-answering doctrine of competition is never invoked except in favour of the foreigner.

English produce and French produce are in competition for the London market. Geographical position favours the English grower, better climatic conditions favour the French grower; when the net result is to put both on a footing of equality it is in the power of the English railway companies to turn the balance of natural advantage in favour of either one or the other. By decreasing the rates on foreign produce, by increasing the rates on home produce, until the one set of rates is comparatively the double of the other the English grower may be badly worsted. This the companies do, and they say that the "interest of the public" in competition will justify this action of theirs in every court or before every tribunal whatsoever. Their action must be right, for no one ever heard of competition as a ground for giving favourable rates to English producers. The mere idea would be scouted as the rankest of heresies. Such principles of social politics as these it is which are ungraspable by the bucolic mind.

If preference in rates is advantageous to the public interest when bestowed on the foreigner, why is it not of equal advantage when it is the home producer who requires it? It is said that the due interest of the British public requires produce grown at 100 miles distance to be ousted from its ordinary market in favour of produce grown at 150 miles distance. Let this be so. Still, without more explanation, and no explanation at all has ever been vouchsafed, what is so incomprehensible to the English farmer is the reason why it is always the 150 miles French traffic and never the 150 miles English traffic which the English companies are held to be justified in preferring.

Where does the benefit to the public come in, in this case? What unapparent advantage accrues to the shareholder when he makes a loss on foreign produce in preference to a gain on the home grown?

These are the perplexing problems to which the farmer "in mazy error lost" can find no end "when he sees French produce carried past his doors" whilst his own is wasted for want of a market. The only thing clearly noticeable in this business is that the ingredient of competition works all one way. Every chance is against the home producer; if it is "heads," the foreigner wins; if it is "tails," the English producer loses. In the case of the Lincolnshire potatoes the English farmer loses and the English shareholder loses; in the case of the St. Malo potatoes, carried at a loss, the French farmer wins and the English shareholder loses.

In the case of Lincolnshire the growers appealed to the Railway Commission against an increase of 2s. per

ton in the London potato rates, which on 500,000 tons of traffic might have given the companies another £50,000 of revenue if it had been possible for the growers to pay it. Eventually a compromise was effected by the farmers paying the companies another £20,000 *per annum*. The farmers protested at the time that agricultural profits were at the minimum and that any increase of rate, however small, would mean decrease in traffic. Railway managers would not listen, but acted like the adders of Palestine who put their tails in their ears that they may not hear the voice of the charmer, charm he never so wisely. The reports of the Board of Agriculture show that the growers were right and the railway managers wrong, and that in injuring the Lincolnshire farmers (in the public interest of course) the managers have injured their own shareholders also. Since the increase of rate came into operation nearly 15,000 acres of potato land in Lincolnshire have been put out of cultivation, so that the companies have lost about 75,000 tons of traffic, say, £30,000 as a set-off against the extra £20,000 which they have made the farmers pay them.

Other facts relating to potato traffic are set out in the pamphlet on "Agriculture and Railway Rates," from which the following extract is quoted.

#### POTATOES.

As affording an illustration of comparatively high rates charged by railway companies for the carriage of potatoes the case of a consignment of 100 tons forwarded from Dundee to New York was mentioned to the Fruit Culture Committee. When the potatoes arrived at New York it was found that an import duty intended to be prohibitive had been placed upon them. Accordingly they were



not landed but were placed on board a ship bound for Liverpool and sold there. The freight, Dundee to New York, New York to Liverpool, transfer charges and dues amounted in all to 23s. 10d. per ton; the railway rate, Dundee to Liverpool direct would have been 24s. 2d., so the shipper saved £1 13s. 4d. on his hundred tons owing to the circuitous route by which his produce was brought to its ultimate destination.

#### FOREIGN CULTIVATION INCREASED.

Mr. Pratt writes: "Then the growing of early potatoes in France has assumed such a magnitude that the trade therein done through the port of St. Malo alone represented in 1902 a total of over £200,000. It is no wonder that a year or two ago a St. Malo merchant in addressing a meeting of agriculturists at Dol advised them to cultivate potatoes on every available acre. The export from St. Malo amounts in the height of the season to as many as 1,000 tons a day, so that complete train-loads of French potatoes can be made up at Southampton for transit to London. . . . One further consequence of all these conditions is that agricultural land in the district has doubled in value."

#### RAILWAY RATES--ENGLISH POTATOES.

English potatoes are also conveyed by the train load from the district of which Spalding may be taken to be the centre, at a distance of a little less than 100 miles to London. Mr. J. W. Dennis, a large grower and salesman, gave evidence as to this traffic both before the Court of the Railway and Canal Commission and the Preferential Rates Committee.

It appears that formerly the Spalding group rates were fixed at 9s. 2d. per ton, competition between three railway companies brought them down to 7s. 2d., and recently combination between the companies put them up again to 9s. 2d. Owing to combined action on the part of the growers the rate has been once more reduced to 8s. 4d., being more or less the equivalent of the Burton grain rate of 1d. per ton per mile.

#### POTATO RATES INCREASED £30,000 PER ANNUM.

The rates for the Spalding district were those brought before the Railway Commission, and by the evidence there given it appears

that the annual traffic thence to London is 150,000 tons and the increase in rate, so long as it lasted, transferred £15,000 per annum from the pockets of the growers into those of the railway companies. The alteration in rate was not confined to Spalding, and a rough estimate puts the total increase of rate levied upon this district at £30,000 per annum. As a result of discussion and litigation the railway companies now propose to keep 1s. 2d. of the 2s. increase and to give back 10d. of it, retaining for themselves about £17,500 of the annual surcharge.

### VOLUME OF TRAFFIC.

Upon other potato traffic of the neighbourhood higher rates than those in operation at Spalding have been charged all along and it is not now proposed to give them the benefit of the 10d. in question.

The Agricultural Statistics for 1904 give the produce of this district as :—

|                     |                              |
|---------------------|------------------------------|
| Lincoln . . .       | 76,249 acres, 416,417 tons.  |
| Cambridge . . .     | 24,024 acres, 109,102 tons.  |
| Huntingdon . . .    | 9,092 acres, 49,086 tons.    |
| Total of District . | 109,365 acres, 574,605 tons. |

The great bulk of this traffic is sent forward by railway either to the Midland counties or to London, and in round figures it may be taken that the dispute concerns about £50,000 of charge on 500,000 tons of potatoes, being the produce of 100,000 acres.

That is to say that the railways take about 10s. per acre on potato land which the landlords and tenants think ought fairly to be divided between themselves.

### RAILWAY RATES—FOREIGN POTATOES.

Mr. Pratt is the authority for the statement that potatoes are brought from St. Malo in quantities of 1,000 tons per day, giving complete train loads of French potatoes for transit from Southampton to London. Mr. Dennis says that the rate from St. Malo is 10s. 10d. per ton, Mr. Malby, who certainly ought to know best, says it is 12s. 6d. Mr. Malby also states the volume of the traffic. "As regards potatoes in bags from St. Malo, we have carried 286 tons since the 1st January, 1904, to the present date" (July, 1905).

I make no attempt to reconcile these statements, it is quite possible that all may be correct. For the purpose of a general comparison it matters but little. The English traffic travels 100 miles for 8s. 4d. The French traffic travels 250 miles for 12s. 6d., it uses expensive dock accommodation at St. Malo, and infinitely more expensive dock accommodation at Southampton. Probably if a proper proportion of the four millions of expenditure at Southampton were allotted to this traffic, the whole difference of 4s. 2d. would be found hardly sufficient to cover it. And then as compared with little or no service at Spalding, there is the loading into the steamers at St. Malo, the unloading out of the steamers at Southampton, and the loading into trucks there.

From Havre again it is admitted that the rate including the same costly services is 10s. 10d., but there it is alleged there is no traffic. From Caen the rate quoted is 9s., but there again the railway company denies that there is any traffic. In all these three instances the offer of the low foreign rate is held to be justified by the fact that there is no traffic. When there is traffic then the rates are justified by the mass and volume of it. So that whether foreign traffic is "nil" or enormous either set of circumstances will justify the quotation of *minimum* rates, but whatever the circumstances of English traffic may be, nothing can be adduced in argument of weight sufficient to warrant any corresponding reduction in rates.

#### POTATOES COMPARED WITH MEAT.

Under the heading of "Meat" the rates are quoted at which the railway companies elect to carry the bulk of the traffic in foreign meat, and it will be seen that they range from a fraction over a 1d. to a fraction under 1½d. per ton per mile. The Board of Trade in their report to Parliament, 1890, explain the principles underlying their method of classification. "We have also had regard to the following important principles: value (including damageability and risk), weight in proportion to bulk, facility for loading, mass of consignments, and necessity for handling." Acting upon these principles potatoes are located in Class C and meat in Class 4, and the maximum rates for distances of 50, 100 and 150 miles would compare:—

Potatoes, 9s. 5d., 14s. 5d., 17s. 4d.

Meat, 20s. 0d., 30s. 6d., 39s. 8d.

Yet the lowest rate quoted for English potatoes from Lincolnshire, a county growing nearly half a million tons, is the same penny per ton per mile charged on foreign meat slaughtered on the banks of the Mersey. Now compare the essential differences in the two traffics as they commend themselves as being of importance to the Board of Trade.

Value on the market : Potatoes, £5 per ton ; Meat, £40.

Damageability : The comparative risk may possibly be put as 1 to 100.

Weight : Potatoes, the condition of the rate provides for 5 tons per truck ; Meat,  $2\frac{1}{2}$  tons per van.

Loading : Potatoes, "nil," owner loads ; Meat requires careful manipulation.

Bulk of consignments : Potatoes, 300 tons per train ; Meat, 65 tons per train.

Regularity : Potatoes, every day throughout the season unfailingly ; Meat, as ships arrive.

If, then, the Great Western Company can convey a train of 65 tons of meat for one penny per ton per mile, and the Brighton Company are satisfied with the profit they get when bringing potatoes 250 miles from Caen for 9s., train loads of potatoes from Lincolnshire ought not to be charged at so high a rate per mile as 1d.

Compared with either of these two rates 5s. per ton from Lincolnshire would be in fair and reasonable proportion.

If this is so, railway companies are drawing from land in that district about £1 per acre more than they are justly entitled to.

### LOSS ON FOREIGN POTATOES.

Assuming the St. Malo potato rate to be 12s. 6d. and not the 10s. 10d. which Mr. Dennis says it is, then 6s. 3d. may be allotted to the land carriage, say 1d. per ton per mile. Out of this penny must come some substantial proportion towards paying £175,000 of docks working and interest on four millions of dock capital. In order to obtain these reduced rates on the foreign traffic a heavy loss is incurred on the trans-channel service. The L. & S. W. steamboats have cost £600,000 in capital outlay. Interest on this sum, insurance and renewals can hardly be calculated at less than £60,000, and the published accounts show an annual loss of £20,000

on working. Taking the steamboat traffic by itself, the revenue is £160,000, and the outlay in earning it, including interest, comes to £80,000 more. Deduct from the land carriage a rebate equal to the loss on water carriage, and it is manifest that the South-Western receipts on French potatoes run to about one halfpenny per ton per mile. They may reach a small fraction more, but it may also be that the sum is a small fraction less. Thus the English railway company in abetting the competition between St. Malo and Spalding accepts a total rate which provides sea freight at bare cost, and railway charges at half the rate charged by the Great Eastern Company on the English traffic.

#### RAILWAY RATES *v.* IMPORT DUTY.

At the present moment great importance is attached by the British electorate to the principle of free food supply. If the proposition were made by a Chancellor of the Exchequer that he should levy an import duty of 2s. per ton on half a million tons of foreign potatoes, he would not have to wait long for the appointment of his successor. What, however, the Government of the country may not do for the benefit of the country without risk of immediate overthrow, the railway companies may do for their own benefit, not only with impunity but with recognised approval, and suddenly without a word of warning they may add 2s. per ton to rates which have been in existence for fifteen years. While the Lincolnshire growers are called upon to face the equivalent of a 2s. duty, the South-Western shareholders are called upon to provide a bounty for French growers by paying out of their own pockets one-third of the cost of bringing the French traffic from St. Malo to England. In this manner the constitutional principle of free trade and the sacrosanct theory of free railway competition are both amply vindicated. No duty can be levied for revenue purposes on foreign food-stuffs, then let the railway companies serving Spalding levy an extra 2s. on English potatoes by way of extra railway rate and put it in their own shareholders' pockets, then the consumer's interests will be duly safeguarded if the South-Western shareholders take 2s. out of their pockets and distribute it among the potato growers of St. Malo. Everybody's conscience is satisfied by the simple expedient of putting this one little additional burden on English agriculturists.



## ALGERIAN POTATOES.

Early potatoes are brought across the Mediterranean and landed at Marseilles, and thence conveyed *via* Paris and Boulogne to London at an inclusive rate of 52s. These would be conveyed at *grande vitesse*, the equivalent of passenger service in England. Minimum consignments of two tons from Wisbech to Gloucester would be charged this same rate; from Wisbech to Glasgow and Edinburgh there is a traffic upon which the charge per ton on two-ton lots is quoted at the exceptionally low figure of 92s.

The moral pointed by this story seems to be that in order to cultivate French traffic—take it away, that is, from the direct route of the South-Eastern and Chatham—the South-Western Company, taking capital outlay and loss on working both into account, are worse off by one million sterling than if they had left this piece of competition alone. Dealing with round figures, and capitalising the loss on working, the position is, roughly, this: the South-Western net revenue available for dividend has to be distributed among the holders of £13,000,000 stock instead of £12,000,000 as it might have been. What might have been a dividend of  $6\frac{1}{2}$  per cent., had not public interest required the diversion of the South-Eastern traffic, is reduced to 6 per cent. because it does.

£12,000,000 of stock paying  $6\frac{1}{2}$  per cent. is worth £19,500,000.

£12,000,000 of stock paying 6 per cent. is worth £18,000,000.

Through embarking on their steamboat venture the South-Western shareholders appear to be about £1,500,000 worse off than they were before.

They have had some traffic on their line, which might otherwise have gone *via* Folkestone ; then, say the loss is one million only, and let that be borne in mind as the result to one company of competition for foreign traffic, when the interest of the companies in maintaining competition is set up in answer to a trader's complaint that his business is being destroyed through preferential rates granted to the foreigner in " the public interest ".

## CHAPTER IX.

### AGRICULTURAL RATES.

THE question of agricultural rates has been dealt with, in part, in the pamphlet quoted in the last chapter, and attention is there incidentally called to the high rates which are charged on the agricultural produce of the United Kingdom.

Unremunerative rates are charged on foreign produce, and the loss of profit is made good by the high rates levied on home traffic.

In those instances where collected and delivered rates only are quoted, and also in those where the farmer does the loading, the rates charged would almost invariably be much above the maximum.

The Provisional Order Acts are an abiding monument to the ability and energy of their framers, Lord Balfour of Burleigh and the late Sir Courtenay Boyle; but time and accumulated experience were both wanting when the Acts were drafted, and it is no derogation of their valuable work to say that it may not be altogether perfect, and that agriculturists may possibly be right when they say that the rates at "roadside" stations are higher than they ought to be.

At the preliminary inquiry held by the Board of Trade

the traders asked for information as to terminal cost at a country station. Buckfastleigh was selected as a type, and it was found there that the average cost of station and services terminals combined amounted to less than 7d. per ton.

A favourite procedure with railway apologists, when they denounce the unreasonableness of landowners complaining of high railway rates, is to institute a comparison between the rates charged on foreign meat, sent by the train load from Liverpool and Birkenhead, and those charged on a hundredweight of meat sent from a "roadside" station in Cheshire. When they have persuaded themselves that any such comparison is totally futile they treat the agricultural complaint as disproved in its entirety.

"The farmer," they say, "sees train loads of foreign meat go past his station and thinks himself ill-treated if his hundredweight of fresh meat is not charged at the same rates as are quoted for train loads."

It is no part of a farmer's business to become an expert in railway rates, and what he is likely to think on such a subject would assuredly be wrong. That may be taken to be admitted. But if the farmer is wrong, it by no means follows that every agricultural rate is necessarily right, which is the conclusion supposed to be deduced from the farmer's want of knowledge. It is quite true that it is not possible to ascertain, by many shillings per ton, what may be a fair rate for train loads from Birkenhead by instituting a comparison with hundredweight rates from Carnarvon, or *vice versâ*. But there would be nothing difficult, to one acquainted with the ordinary facts of railway cost, in showing that the train-load rate from

Birkenhead is far too low and that the hundredweight rates from "roadside" stations are far too high.

Whenever ordinary rates are charged they include 3s. per ton at each end for terminals. These charges are based on averages: they are insufficient for such costly stations as Birkenhead or Liverpool, but are far too much for Carnarvon or other "roadside" stations where their value would be less than 6d.

Moreover, when traffic is sent by the hundredweight additional charges are made to meet the extra clerkage cost attaching to "small parcels" of goods, and these may be anything between 8s. 4d. and 30s. per ton. This additional charge is allowed for extra "clerkage" to compensate the extra cost of providing and preparing twenty consignment notes for twenty separate hundredweights, when one only is required for one consignment of one ton. At Buckfastleigh the total cost of "super-vision and clerkage and police," together with "stationery and stores (including coal)," does not amount to 1d. per ton. When 13s. 4d. is added to a 40s. local rate at the distance of Birkenhead, making the total rate 53s. 4d., as compared with the 25s. charged on foreign meat, it takes more than a casual reference to what a farmer may erroneously think to convince the farmer's advocate that the charge of 53s. 4d. is a fair one.

Incidentally it may be remarked that, so far as controversy goes, the evidence of railway witnesses tends to prove the trader's case as to meat.

When rates for fresh meat to London from the distance of Liverpool were about 55s. per ton, it was asserted that frozen meat gave so much better loading that 55s. might



be reduced to 25s. with equal advantage to the carrying company. Accordingly, for frozen meat a 25s. rate was put into operation at Liverpool, and corresponding rates of 45s. at Glasgow and 17s. 6d. at Southampton.

The next development was that live animals were imported from abroad, slaughter-houses were constructed at the ports, and the traffic once more became one in fresh meat and not in meat frozen. Then the companies concerned find out that better loading has nothing in the world to do with the question: 25s. is the rate for frozen foreign meat, so 25s. must be the rate for foreign fresh meat, let the loading be good or bad or what it will. So railway managers quite gravely tell Earl Jersey that when foreign fresh meat and foreign frozen meat come into competition there is nothing to prevent the same rates being charged upon both; in fact it is absolutely necessary that both should be charged precisely alike. When, however, the fresh meat is English, and the frozen meat is foreign, then the opposite argument must prevail, and no rate for English meat can be held to be fair unless it is nearly or quite the double of the foreign.

The same sort of arguments apply to hay and straw. The Board of Trade, in proposing schedules to Parliament, took note of the difference in cost of conveyance between hand-pressed, machine-pressed and hydraulic-pressed traffic. Since that time the matter has been studied more carefully, and it has become clear that very much too much importance was attached to considerations of differences in mode of packing. But the Joint Parliamentary Committee heard further evidence (from the railway side only) and still further increased the difference, too great

already, in the maximum rate allowed. For a fifty mile distance the authorised rates are 9s. 6d., 12s. 6d. and 15s. per ton for the three descriptions of traffic. The companies will not reduce the English rate of 15s., which is much too high, but they find it profitable to make considerable reductions on the 9s. 6d. applicable to imported foreign traffic.

The 25s. meat rate from Liverpool is a rate exceptionally low, although it was the one put in the forefront of the list of those which the companies held to be unimpeachable. At every port in the kingdom foreign produce is forwarded inland at rates not vouchsafed to home growers. Where there is no competition, "bulk" and "packing" are set up as standard answers. In cross-examination of witnesses before Earl Jersey's Committee the companies produced calculations in respect of the relative cost of full and light loading.

So did the present writer.

The results had a wide margin of difference. It is not much more than a question of arithmetic, and once the two sets of figures were laid before a Committee they would have little difficulty in putting an approximate value per ton on "packing". In the case of Haddington and Glasgow the companies valued the difference in loading at the whole difference between the rates, namely, 25s. The writer put it at 1s. The writer was willing to admit that in comparing the cost of conveyance of meat "bulk and packing" might justify a difference of 3s. per ton as between the Birkenhead traffic and that from North Devon, charged at 38s. 4d.

In contesting these calculations the Great Western

manager mainly addressed himself to showing that the estimate of cost on the South-Western was too low, and he made estimates of cost of South-Western working, which, if correct, would show that South-Western ordinary shareholders would never get more than about 1 per cent. dividend. He let the estimated cost per mile on the Great Western pass. Somewhat in the style of a Savoy comedy, the South-Western manager found no fault with the estimate of South-Western cost, but said the estimate of cost on the Great Western was all wrong. If each manager's tacit admissions in regard to his own traffic are to be accepted, then, in the most extreme case that can be quoted, the gigantic proportions of "economy in bulk and packing" that loom so ominously in the distance, shrink down to a modest 3s. when they are approached closely, and carefully weighed and examined.

If this view is even approximately correct, the rates on agricultural produce in this country stand in urgent need of revision. They are almost invariably fixed at the maximum, and this being so, the maximum is due to be reduced at the earliest opportunity.

As regards all agricultural rates and charges there is one recommendation that should receive immediate and serious consideration. With the statute law in the hopeless confusion in which it now is, the agriculturist is in the most absolute impossibility of enforcing it, or any part of it, or of availing himself of its protection, in any, the very slightest, degree. If the agriculturist is to have any rights or protection whatever in the matter of railway traffic it can only be by entrusting the enforcement of them to some such authority as the Board of Agriculture.

It may well be that the Government ought to take upon itself the duty of seeing that railway law is duly carried into effect on behalf of the public generally, but until this is done, and even if it is, the Board of Agriculture should be empowered at once to take active measures on behalf of agriculture when general increases of rates or withdrawal of facilities are threatened by the companies.

The companies, let us say, announce an increase of rate affecting the produce of 100,000 acres in Lincolnshire with the object of taking £50,000 from the farmers' pockets and putting it in their own. It is manifestly impossible for individuals or combinations of individuals to hold their own in such an emergency. It is submitted that the authorised intervention of the Board of Agriculture in such a case is a matter of prime and most urgent necessity.

## CHAPTER X.

### CONCILIATION.

THE so-called "conciliation clause" of the Act of 1888 is a new departure which has worked well within the limits allotted to it by the Board of Trade.

The section runs thus :—

31.—(1) Whenever any person receiving or sending or desiring to send goods by any railway is of opinion that the railway company is charging him an unfair or an unreasonable rate of charge, or is in any other respect treating him in an oppressive or unreasonable manner, such person may complain to the Board of Trade.

(2) The Board of Trade, if they think that there is reasonable ground for the complaint, may thereupon call upon the railway company for an explanation, and endeavour to settle amicably the differences between the complainant and the railway company.

(3) For the purpose aforesaid, the Board of Trade may appoint either one of their own officers or any other competent person to communicate with the complainant and the railway company, and to receive and consider such explanations and communications as may be made in reference to the complaint; and the Board of Trade may pay to such last-mentioned person such remuneration as they may think fit, and as may be approved by the Treasury.

(4) The Board of Trade shall from time to time submit to Parliament reports of the complaints made to them under the provisions of this section, and the results of the proceedings taken in relation to such complaints, together with such observations thereon as the Board of Trade shall think fit.



The Board of Trade, in carrying out the duties allotted to them under this section, seem to the trader to have placed a somewhat restricted interpretation upon them.

The Board of Trade are the best judges of what is desirable in the exercise of functions of so unusual a character, and it is not proposed to offer any comment on the position taken up by the officials of the Board. In the formal reports to Parliament it is explained that the Board do not elect to deal with complaints turning upon legal questions which the Board of Trade have no power to determine, nor when the issues involved are of extremely great importance, and as a point of practice the Board do not deal with cases raising issues of wide application. Thus, if a fruit grower complained that the rates charged to him were disproportionate to those charged at other local stations (and very many of them are), the complaint would be attended to and most probably rectified; but if the complaint was that all local rates were disproportionate to those charged *via* Folkestone, the Board of Trade would consider the matter too high for them. And, generally, if the difference is one not suitable for "conciliation" the Board do not consider that it comes within the ambit of their powers.

In approving of the principle, and before any previous attempt had been made by which experience might have been gained, the Legislature seem to have anticipated a wider scope for the operation of the section.

This is evident from the fact that complaint to the Board of Trade is made compulsory in cases of through rate applications and in cases of increases of rate under the Act of 1894. That Act was legislating upon increases of

rates made systematically by every company and stated to amount to hundreds of millions in number. These are precisely the circumstances under which the Board elect not to intervene, so that between the law and the practice the only effect of the legislation is to add seriously to the expense and delay of the application.

In considering the general effect of the Act, the trader coupled the compulsory reference to the Board of Trade with the directions to the Board to report formally to Parliament and to make such observations as may be thought fit.

To the trader's mind this conveyed the impression that when complaint was made to the Board of Trade that through rates were refused, or increases in rate made on a large scale, if the facts were not complicated, and if the question was mainly one of public policy, the Board of Trade would arrive at some conclusion of their own. The Board of Trade would intimate this opinion to the parties, and if either side did not accept it, they would make fit observations to Parliament for their future guidance.

The Board of Trade are far from adopting this view of their duties. They simply prepare a formal record of transactions stating the facts of each case in the form of the head-note of a law report.

Thus, two things are wanting which the trader fondly hoped that the 1888 Act had supplied, namely, some method by which the attention of Parliament might be drawn to imperfection in the working of the Acts, and some method by which cases which will not bear the cost of expensive litigation may be determined. Both of these matters are well within the competence of the

Board of Trade. They are discussed in the chapters on "Arbitration" and "Amendment".

The opinion has been expressed that duties such as those indicated would clash with the position of friendly mediation. It is possible that this might be so. If so, it becomes a matter for serious consideration as to which may be the more important, and whether "conciliation" might not be merged into "arbitration" and "legislation" to the much greater advantage of the public.

Under any circumstances, and whatever else may be done or omitted, it is urgent that the Board of Agriculture should be clothed with more formal authority in the matter of railway traffic than they now possess, not merely in the interest of agriculture, which is obvious, but in the interest of trade generally.

There are many matters of importance to every section of traffic—obnoxious risk conditions would be one—which press very heavily on agriculture. It might be expected that the Board of Agriculture would be peculiarly well able to adjust much of this, and, if so, trade in general would fully participate in the benefit.

The "conciliation" of section 31 might, at least, be transferred to the Board of Agriculture for matters agricultural, and that Board might be instructed to report to Parliament whenever it is found that obstructive rates or conditions form an impediment to agriculture.

## CHAPTER XI.

### MAXIMUM RATES.

WHEN railway companies were first authorised to become carriers on their own lines of railway they were empowered to charge for conveyance such reasonable sums as they thought fit within their statutory maximum.

The theory was soon advanced that any sum within the maximum was *de facto* reasonable.

The maximum itself was extravagantly unreasonable upon the face of it. In a schedule to an Act, intended to serve as a model for all succeeding special Acts, twenty articles only are mentioned. The rate per ton per mile for every unenumerated article is 4d. The companies claimed, and the Courts allowed the claim, that this 4d. was not intended to cover the provision of station accommodation, and the services of loading and unloading were also allowed to be charged for in addition.

These extra services were all calculated at imaginary figures, with the result that the maximum rates in the various special Acts stood at such sums that no ordinary traffic could pay them and survive. Furthermore, the process of amalgamation which has been continuing since the first construction of the railway system, has resulted

in throwing the question of the charging powers of the great railway companies into inextricable confusion. The effect of the amalgamations of one company might be that their powers to charge would be distributed through nearly a hundred Acts, and, incomplete as they all were, the altered circumstances of traffic have rendered them all entirely obsolete.

Following the recommendations of the Committee of 1882, and with a view to induce some system and order into this confusion, the leading companies introduced various bills to Parliament with the object of revising their maximum powers. These were far from moderate in the charging powers sought for; considerable objection was taken to them, and the matter made no progress until the passing of the Traffic Act of 1888. This Act prescribed a revision of the companies' powers which was construed to imply the provision of a complete and uniform classification; of rates as nearly uniform as might be; and of uniform regulations applying to them. Under the procedure adopted, each railway company submitted to the Board of Trade a draft of the Act which it was proposed that Parliament should sanction, and traders interested were invited to submit formal objections as regards the parts of which they disapproved.

Lord Balfour of Burleigh and the late Sir Courtenay Boyle were appointed to hear objections, and to take evidence on behalf of the Board of Trade. In the report presented to Parliament, these gentlemen state that they received detailed objections from over 1,500 objectors; they sat for sixty days at Westminster, eight days at Edinburgh, four days at Dublin, and thirteen days at



Whitehall; they considered 2,256 documents and tables of figures, and heard evidence and argument which, as reported, occupy 3,926 folio pages of print.

As a result of this inquiry the Board of Trade themselves drafted schedules of maximum powers and conditions which were submitted to a Joint Parliamentary Committee sitting in 1891-2; the Committee slightly revised the Board of Trade schedules, after hearing both sides, at sittings extending over a considerable period in both years. This was the origin of the existing maximum powers Acts which were formally sanctioned by Parliament under ungainly titles similar to the following: The Great Eastern Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict., c. 214); or, when several are grouped together, The Railway Rates and Charges, No. 1 (Abbotsbury Railway, etc.), Order Confirmation Act, 1892 (55 & 56 Vict., c. 39).

In the traders' view the rates sanctioned were far too high, even as maxima, but they did not oppose them so energetically and earnestly as they might have done, understanding that they were not intended to be put into immediate operation, but that they all included a wide margin for future contingencies such as increased cost of wages, coal and materials. Upon this point great controversy subsequently arose.

The traders considered that 20 per cent. or thereabouts of the new maximum rates was provided for future contingencies or special circumstances, and that the companies had given an honourable undertaking that at that time they would neither put their full maximum powers into operation nor substantially raise any then existing ordinary rate.

When all the companies forthwith did both, immediately upon the coming into operation of the new Acts, the explanation given was that the implied promise not to charge the maximum was conditional upon their own proposed schedules being accepted, and as to the implied promise not to increase their existing rates, that was contingent on the working expenses continuing to preserve the same ratio to the receipts, and that the ratio had, even during 1892, very greatly increased.

As to the suggestion that any promise made was dependent on the railway schedules being accepted as proposed, there can be no possible grounds for any such contention. It was manifest, within a week of the opening of the inquiry, that no scales of rates similar to those inserted in the companies' schedules would receive even passing consideration, and up to the end of the inquiry in Parliament evidence was given by traders on the assumption that the Board of Trade schedules were maxima in the fullest sense of the word. If at any time a trader gave evidence, based upon the anticipated charge of the maxima, he was accused of wasting the time of the tribunal and all he said was discounted as being manifestly of no value.

Lord Balfour and Sir Courtenay, giving evidence on this point before Mr. Shaw Lefevre's Committee, both admitted unhesitatingly that they, for their part, would never have proposed maxima so high as they had done, had they not understood the protestations of the railway managers in the sense here stated.

The report of this Committee quotes passages from railway managers' evidence making it clear that although

they did not profess to enter into any binding compact in respect of increases of rates, yet, on behalf of the companies they represented, they strongly protested against maximum rates being cut down on the ground that they might shortly be put into operation to their full extent.

True it is that they do not distinctly pledge themselves not to do so; they simply say it is impossible. This, as the type of the remainder, is what is said on behalf of the Great Western Railway Company:—

I am bound to say, after careful consideration, that I do not see how we are to recoup ourselves for these heavy losses. We get the best rates we can at the present time. After a good deal of discussion with our customers from time to time in various districts, we have arrived at the rates which we believe, and which are admitted, to be mutually satisfactory as a rule. That being the case, we could not, without interfering with trade in a serious manner, put up those rates which will be below the maxima.

The traders consequently felt themselves aggrieved in no slight manner when, on the first day of the coming into operation of the Acts, every rate was put at its maximum, those of the Great Western, of course, amongst the others.

Those concerned thought then, and they think so now, that the maximum rates now enforced would never have been sanctioned by Parliament had they not been persuaded that immediate increases of rates were altogether beyond the pale of practical politics, and that they would not be, and that they could not be, put into operation.

If all this is so, the maximum rates are due to be revised when an amending Act is under consideration.

The traders are far from being willing to admit that

the plea of increased working expenditure is sufficient to afford justification for what was then done.

The rates taken for purposes of comparison were those in existence at the date of the inquiry when working expenses averaged 52 per cent. of the receipts. During 1892 these had increased to 56 per cent. ; but an increase of 4 per cent. in the working ratio would not warrant the taking of the whole 20 per cent. margin provided for future and special contingencies.

By 1900, when the case of Smith and Forrest was heard, the ratio of working expenditure had increased to 62 per cent., but the Railway Commissioners held that this increase of ratio would represent but 1 per cent. increase of existing rates. Counsel for traders urged that such increase of expenditure as had occurred had arisen mainly in respect of competition for passenger traffic, and it was evident that the Court had acquiesced in this view to a large extent.

As the traders argued then, so they contend now, that it is the greatly increased accommodation given to the passenger traffic, combined with the continually reduced week-end fares and the like, which gives such an impetus to increase in ratio of expenditure. There has been nothing in the working of goods traffic, even when the cost of wages and of coal has been duly taken into account, which would balance the increases in rate put into operation in 1893 and maintained ever since.

The chief points to be remembered in any future discussion upon maximum rates are that full maxima were put into operation in 1893, long before any increase of expenditure was available in justification of such a step,

and when, in the opinion of every one but railway managers, the companies stood pledged to make no substantial increase.

During this discussion one phase of the question was dwelt upon by managers at considerable length and with much iteration. They said, and continually repeated the statement at every opportunity, that a great bulk of the goods traffic was competitive and, as regards the whole of that, increase of rate was a working impossibility. Achievement of such impossibility as this is rapidly becoming the order of the day. A year or two ago the Lincolnshire potato rates were increased from 7s. 2d. to 9s. 2d. (28 per cent. of increase), the impossibility of doing so notwithstanding. With the year 1907 a new policy of combination has been inaugurated offering opportunities for indirect increases which are far indeed from being inconsiderable in their effect though they may not be susceptible of exact arithmetical assessment.

This again reacts upon the complicated calculations involved in the study of ratio of working expense as a ground for increase of goods charges. The service of the goods traffic remains precisely where it was; the goods rates directly and indirectly are being steadily increased in every direction available.

The passenger accommodation is being largely extended, the passenger fares, week-end, tourist, excursion and so forth are being steadily reduced. Hence it is that increase in ratio of working expenditure becomes daily more unreliable as a criterion for ascertaining the cost of goods and mineral traffic.

An illustration of this is given in the chapter on Com-



petition, where the effect of the opening of the Fishguard-Rosslare route is commented on. By the provision of a new route the expense of working the same tourist traffic would be increased from 62 per cent. of receipts to 124 per cent. But this supplies no reason, as arguments deduced from increase of ratio imply, for any increase in the goods rates.

Three main factors combine to increase the ratio of working expenses to receipts, *viz.*, increased cost, increased accommodation, decrease of charge. It is the first only which affects the goods traffic of the present day, but during recent years all three have become applicable to passenger traffic to so great an extent that in all probability three-quarters of the increase in ratio is due to that branch of business.

In compiling fresh schedules of maximum rates the Board of Trade adopted the principle of separate charges for station accommodation and services, and of charges for conveyance graduated according to distance. The principle has met with entire approval.

Thus in the case of, say, grain on the London and North-Western Railway, the maxima for different distances would compare as follows:—

|          |          |
|----------|----------|
| 10 miles | 4s. 2d.  |
| 20    ,, | 5s. 8d.  |
| 50    ,, | 9s. 5d.  |
| 100   ,, | 14s. 5d. |
| 150   ,, | 17s. 4d. |

Traders think, for the reasons given above, that this scale is too high, but they accept it thankfully as a great

improvement on the previous inchoate schedules. There is one point on which additional regulation is desired. When traffic passes from one railway to another the companies claim, and consequently exercise, the right of recommencing *ab initio* in calculating the powers of the separate owners of the route. Thus, in the case last mentioned, if one company owns the whole route for a distance of 150 miles the maximum rate chargeable would be 17s. 4d. If the route were equally divided between three companies the sum chargeable would be 22s. 11d. In the great majority of cases there is no more trouble, and consequently no more expense in handing over traffic to another company than is involved in remarshalling the trains of the same company at one of their own junctions, and this mode of calculation, apparently sanctioned by existing Acts, is one that requires adjustment.

Particularly is this the case with short distances when traffic coming into a large town may have to pass over two, three or even four short distances, each reckoned as six miles, though the total mileage may not exceed four.

## CHAPTER XII.

### INCREASE OF RATES.

As mentioned in the last chapter, immediately the new schedules of maximum rates came into force the companies at once put them into operation. The opinion of the Board of Trade upon this action of the companies was expressed in a letter to the Railway Association pointing out that although the Board had been assured that the quotation of the new rates was of a temporary nature only, they continued to receive complaints of the new rates as actually levied.

They have come from all classes of traders—from traders doing a large amount of business with railway companies, as well as from traders dealing in small consignments, and ill able, save with the assistance of a State Department, or through the efforts of individual members of Parliament, to support their contentions to the full extent of their merits before the railway companies themselves, or, in the last resort, before the Courts of Law.

They extend to the rates for nearly all classes of merchandise, and they are especially emphatic as regards rates for agricultural and dairy produce, an industry quite unable to bear any additional burthen at the present time. Not only do they affect the money charges, but they bear upon the changes made in the conditions of traffic, which, so far as the Board of Trade have at present been able to examine them, are all against the interest of the trader.

The letter proceeded to specify a number of such cases, and ended by expressing the opinion of the Board that it would be

impossible to remove the almost universal dissatisfaction which prevails unless there were at least a general return to the basis of the 1892 rates, except in those cases where they had been compulsorily reduced by the operation of the several statutes.

To this the reply was that the rates were still undergoing a process of revision and that it was hoped that shortly every ground for dissatisfaction would be removed.

In the meantime, 3rd March, 1893, the House of Commons passed the following resolution :—

In the opinion of this House the revised railway rates are most prejudicial to the industries and agricultural and commercial interests of the country : and this House urges upon the Government the necessity of dealing promptly and effectively with the subject.

A Select Committee, presided over by Mr. Shaw Lefevre, was then appointed to inquire into the facts and to report to Parliament. The report of this Committee is adverse to the action of the companies. It calls attention to a matter which is a standard grievance with the traders who suffer from it, namely, that local traffic is hurt by competitive rates in more ways than one.

It was stated by Mr. Lambert that the company (the Great Western) had not been able to raise its rates for traffic where there was competition with other lines, or by water, whether by sea or canal, and that the increased charge had fallen wholly on the non-competitive traffic, that is, on the local traffic, and largely therefore on the agricultural traffic, and at a time when this interest was suffering from severe depression.

The railway companies have virtually admitted that they were in the wrong in raising their charges for the conveyance of goods at

the commencement of this year, for they have assured your Committee that, as soon as their rates are finally fixed, they will give notice that they will refund the overcharge not only to those traders who have ledger accounts with them, but also to those who have paid money over the counter.

Your Committee, however, do not think that this is the measure of the error which the companies committed. They are of opinion that it was not the intention of Parliament that the companies should raise their non-competitive actual rates, even by 5 per cent., all round, for the purpose of recouping themselves for the reductions of other rates which Parliament has pronounced to be unjust and unreasonable.

If this Committee, after hearing all that could be said in favour of charging maximum rates, expressed an opinion so strong as that quoted, it is not surprising if traders should remain of the opinion that the maxima allowed were far too high, and that some legislative measure should now be taken to bring down the local non-competitive rates to the level of those which are voluntarily offered for imported traffic.

The Committee, too, adopted the opinions expressed in Chapter I., being of opinion

that some further step must be taken to protect traders from the imposition of such unreasonable conditions of transport as cannot now be made the subject of arbitration.

They were of opinion, too, that some remedy should be available to a trader, intermediate between the "conciliation" of the Board of Trade and the "litigation" involved in an application to the Railway Commission.

The fear of costs has also, it is said, deterred traders from prosecuting cases before the Commission. However that may be, your Committee cannot but feel that it will be difficult to justify the continuance of the Commission, as at present constituted. The



traders consider it not sufficiently commercial and too much regulated by the procedure of the High Court, and they also hold that it is hardly necessary to take a judge from the High Court to preside.

It has been suggested that the Board of Trade should appoint an arbitrator to determine such questions in the same manner as they can do in some other disputes between railway companies and traders.

Your Committee, however, think that the appointment of a single arbitrator by the Board of Trade, from time to time, would not give satisfaction to both railway companies and traders and would not be a satisfactory solution.

It was not the business of the Committee to indicate how the arbitration tribunal should be constituted, and they did not do so.

Suffice it here to point out that the measures advocated in this treatise do no more than give the simplest possible effect to the views of this Committee, expressed fourteen years ago and entirely neglected since.

The recommendations made as to increases of rates were embodied in the Act of 1894.

This Act provided that increases of rates made since the 31st December, 1892, might be referred to the Railway Commission after a preliminary complaint to the Board of Trade.

A very great number of increased rates were brought under the notice of the Board of Trade, who appointed the Hon. T. W. Pelham to deal with them. As regards these, arrangements satisfactory to the complainants were arrived at. It was obviously in the interests of the companies to make some concessions when they were in the way with their adversaries, and when the complaints they were called upon to adjust, numerous as they were, were

still but as motes in the sunbeam as compared with the hundreds of millions of increases which the traders acquiesced in.

The traders have been much less successful in later applications taken before the Railway Commissioners. The companies advance increased expenditure as a justification, and in connection with this a question, still unsettled, arises. The traders say, "The Act assumes that the rates of 1892 were reasonable, the circumstances justifying an increase must have occurred since then". The companies say, "The rate was reasonable when it was first fixed, if working expenses have increased since that date, the rate may be increased proportionately". In the case of Smith and Forrest the defendant companies instituted comparisons between the expenses of 1872 and 1892. The year 1872 was one exceptionally favourable for the purpose for which it was selected, as the North-Western expenses on goods traffic in that year were only 46·31 per cent. of the receipts. The traders' evidence made it clear that the greater part of the rates, increases in which had been complained of, had been fixed in 1875, and the ratio in working expenditure of goods traffic for that year was shown to be 57·98 per cent., while that for 1892 was 56·69 per cent. So when the rates were increased in January, 1893, a comparison with 1875 would have justified a reduction instead of an increase. The case was not taken before the Court until the year 1900, and the North-Western Company brought the ratio of working expenses of goods traffic for 1899 to 60 per cent. of goods receipts. As to the years of comparison the Court held that in fixing rates for the future, the most

recent standard of expense might be adopted. As for the starting point, their own opinion was that it should be 1892, but they held that a previous judgment binding on them had decided that it should be 1872. As between 1892 and 1899 they decided that an increase in the rates of 1 per cent. was justified, but if the earlier period of comparison was taken the companies had justified an increase of 3 per cent. In the language of the Select Committee, the fear of costs deterred the applicants from taking six companies to the Court of Appeal, and, as they had obtained other substantial advantages, they remained content with a drawn battle.

This illustration shows emphatically the inutility of such a remedy as an application to the Court of the Railway Commission when a comparatively small increase of rates is complained of. If the companies are entitled to select the year of most favourable working prior to 1892, the case is almost hopeless in itself, apart from the difficulty which is experienced by the trader in grappling with the ocean of statistical evidence with which the companies' witnesses overwhelm him.

There is one more remedy provided by the Act of 1888 which traders have not availed themselves of. The companies are required by sec. 33 to publish a list of the increases which they intend to make in their rates, and the section prescribes that the increase shall not have effect "unless and until the fourteen days' notice required under this section has been given". No notice has been given of the increases made under the Act of 1892, and the companies are not entitled to enforce any one of them. It is still open for traders to claim repayment of

overcharges which have been made during the six years last past. In the discussions which took place as regards the publication of these increases, the question of cartage rebate was introduced. An account of what took place between the railway companies, the traders and the Board of Trade in the matter of these intertwined subjects is given in the chapter on Collected and Delivered Rates.

## CHAPTER XIII.

### SPECIAL CHARGES.

IN the Provisional Order Acts, 1891-2, there is a section, common to all, relating to special services. The wording of it was prepared, to some extent, in consultation with traders' representatives.

It authorises the companies to charge for certain services—

when rendered to the trader,  
at his request or for his convenience,  
a reasonable sum  
by way of addition to the tonnage rate.

The section provides that any difference under it shall be determined by an arbitrator to be appointed by the Board of Trade.

No enactment purporting to provide protection to traders has done half so much mischief as has been caused by this unfortunate section.

It relates principally to services at private sidings, to cartage, to siding rent and to demurrage.

As regards all these matters it would have been more advantageous to traders, it would have saved them great



trouble and boundless expense, had the section simply been allowed to stand :—

As regards the services hereinunder mentioned, the company are in no way restricted in charge, and in every other respect may act exactly as it pleases them.

Because this it is, precisely, that has happened, and this is precisely the interpretation which the Divisional Courts have placed upon the section. Unfortunately for traders they have been advised that the words of the section were calculated to afford some limitation to the charges made under it, and they have wasted large sums of money, and a still greater value in time, under that impression. With the most trifling of exceptions, all the vast litigation, encouraged by the apparently favourable expressions of the drafting, has turned out to be fruitless. The view that commends itself to almost every mind influenced by legal training is this :—

The companies are not compellable to render the services mentioned ; no legal principle prevents them from refusing to do so ; in the cases before the Court they have refused to render the services at the price named ; they have offered to render the services at some other price : the trader has accepted the service : therefore he has agreed to pay the price : therefore he must pay it.

This is what the Divisional Courts say in all the numerous cases in which the traders have endeavoured to enforce the terms of the statute. This is the doctrine of *Watson, Todd & Co.*'s case referred to in Chapter III., and, coupled with the general dislike of the judicial mind to all traffic regulation Acts, it is a standing obstacle in

the way of the trader who is claiming the rights which Parliament has stipulated for on his behalf.

The original draft schedule prepared by the railway companies contained the following provision :—

The company may charge such reasonable amounts as, in case of difference, shall be determined by the Railway Commissioners in respect of the following matters :—

Counsel for the traders raised strong objections to matters being left at large in so haphazard a fashion. Especially so as to siding rent and demurrage for which there were general regulations in force and nothing was required except to settle upon one standard form and charge. But the railway managers persuaded the Board of Trade, and possibly the representatives of the traders as well, that it was not to the trader's interest to have any hard and fast lines laid down. According to the managers, if statutory rules were fixed there would be a tendency to abide by them ; and by degrees they would come to be strictly enforced. The companies, so they urged, had no intention of enforcing charges for siding rent, nor for demurrage on trucks, except in isolated cases where the companies' generosity was so much abused that it was absolutely necessary to have some regulations to fall back upon. Moreover, the circumstances were so different at different stations that it would work most unfairly if the same scale and regulations were applied to all alike. These arguments prevailed and the companies were left with the reasonable sums asked for.

No sooner were the new Acts in operation than the companies immediately prepared hard and fast regulations for themselves, out of all proportion to anything

they would have had the hardihood to submit for the approval of the Board of Trade. When the question is brought forward for adjudication whether these general rules and regulations are the equivalent of the reasonable sum authorised by the above quoted section, the County Courts, the Railway Commission, the Divisional Courts, all say they are. The Court of Appeal and the House of Lords do not altogether agree in going quite so far, but what they decide does not prevent the companies from continuing all their charges exactly as before.

Another objection raised by traders to the original schedule was that it referred disputes to the Railway Commissioners. If the question was (as the traders said it was) the fixing of charges applicable throughout the country, then it was due to be settled at the inquiry then being held by the Board of Trade; if specific charges of £5 or £10 for siding rent or demurrage were in dispute, then the Court of the Railway and Canal Commission was far too august a tribunal to be troubled with such cases. Accordingly, the schedule was altered, and now runs:—

Any difference arising under this section shall be determined by an arbitrator to be appointed by the Board of Trade at the instance of either party.

It does not matter how the section runs; whenever a dispute arises the Railway Commissioners are the arbitrators appointed by the Board of Trade, on the plea that the dispute involves consequences of a far-reaching character.

At a trial before a Court, the mode of hearing, the form of evidence, the nature of the arguments, the know-

ledge assumed are all the reverse of the procedure adopted at the Board of Trade inquiry, and the decisions so far given are very different from those the traders would have expected from Lord Balfour of Burleigh and Sir Courtenay Boyle.

During the protracted inquiry at the Board of Trade there was probably no single instance where the original demands of the companies were conceded to them. In a hearing before a High Court of Record, the railway companies are looked upon as being in possession, and they claim and obtain the normal nine-tenths of the law which that position entitles them to.

The coal traders of the Northern counties have brought a mass of cases before the Railway Commission relating to siding rent. All that they asked was that charges should remain as they were fixed by compromise before 1892. This was the recognised basis of the legislation of 1891-2; no one present at the proceedings at Westminster can doubt that the terms of the compromise would have been stereotyped in the Provisional Orders had it been thought practicable to do so. Under the guise of a reduction in nominal rate, but with alteration in the mode of applying it, the siding rent charges made to them were increased tenfold or more. The Court, unfamiliar personally with the process of truck shunting, explained that they were not satisfied that any increase in charge had been made and allowed the railway alteration precisely as it was claimed. As a result the coal merchants have had to forego the luxury of siding accommodation, as the charges sanctioned for it have nothing in common with any reasonable business transaction.

Another serious difficulty waylays the trader under this section. The Act is silent as to what is to be done pending the determination of disputes. The companies consequently settle this matter in their own way, themselves, by enforcing payment of their claim in the County Court. When a dispute arises as to a special charge which the consignee thinks unreasonable the railway officials do, and the freighter does not, know what the Provisional Order Acts have to say about it. If a freighter after objecting to pay an unreasonable 20s. or 30s. does not forthwith apply to the Board of Trade for the appointment of an arbitrator, a summons is issued from the County Court and the plea is then raised, if the case is defended, that no dispute is involved, but that the defendant obstinately refuses or neglects to pay the reasonable sum authorised by the section.

County Court judges, as a rule, adopt this view and promptly give judgment with costs against the defendant. The point to be made clear in the next amending Act is that no Court has jurisdiction to fix the amount of remuneration due for any special service by giving judgment for any specific sum.

If the views as to arbitration suggested in the chapter with that title are not accepted, special arrangements are due to be made for the settlement of disputes under this section.

Failing this, the position remains as before stated: the companies charge exactly what they like, and do precisely as they please, in every one of the matters grouped together under this heading.



## CHAPTER XIV.

### SIDING RENT.

THE charges enforced by the Northern companies under this head have given rise to an amount of litigation unparalleled in railway law except, perhaps, by that which raged around the "packed parcels" dispute between the railway companies and the carriers.

The objecting Federation of Coal Merchants brought their first case before the Railway Commission complaining of unreasonable increase of rates.

The Railway Commission dismissed the case upon the ground that the applicants had made out no *prima facie* case of increase of rate, and that consequently there existed nothing which the defendant company were called upon to justify.

The applicants had taken it for granted that a railway tribunal would be able to perceive of their own knowledge that the altered conditions would involve increase of charge, but the Midland manager boldly denied that this was so, and asserted

that the reduction of the charge per waggon might result in a higher or lower charge in the aggregate to any trader, according to the manner in which that trader's business was carried on.

All that was true in this, was the indisputable fact that the new regulations would not involve payment for siding rent if the sidings were not used. Mr. Turner did not say that if the traders used the same accommodation as formerly, they would pay less for it; what was meant was, that if the traders were deterred by the new regulations from making the same use of the sidings as before they *might* pay a less sum for a less use than they formerly paid for a larger one. Even this was scarcely possible, if anything was paid at all, but the working of the regulations would appear complicated when described in words or on paper, and no traders' witness was prepared to step into the witness-box and explain how it was that the *same user* as formerly would always involve a higher charge.

Since this first repulse the members of the Federation and others have defended hundreds of actions in all the Northern and Midland County Courts, they have brought the County Court decisions before the Divisional Court and the Court of Appeal, they have gone twice to the House of Lords, they have filed other applications in the Railway Commission and the Commercial Court, they have embarked on numerous arbitrations, and in all these proceedings must have incurred expenses aggregating to many thousands of pounds. As a result they have obtained some trifling modification in the charge per day, but none in the regulations under which the days become chargeable, and this was the gravamen of the whole complaint. Traders generally would scarcely be interested in siding rent charges as such, but the transactions relating to it are of supreme importance as illustrating

the absolute impotence of traders, under existing circumstances, to defend themselves from charges insisted on by the railway companies however excessive and unreasonable they may be.

The general reasons why they cannot do so have been dwelt upon elsewhere. The history of siding rent charges affords a special illustration of what takes place in every conflict between traders and companies when the matter at issue is not adjudicated upon by experts.

Siding rent is a charge which the companies claim to have a right to make when owner's waggons stand upon their sidings longer than they think necessary.

The charge becomes a matter of extreme importance in the case of household coal. Coal merchants desire as far as possible to supply their customers direct from the truck, and so avoid the expense and deterioration occasioned by intermediate stacking.

The cost of a ten-ton waggon may be put at 6d. per day; the cost of the mineral siding which it occupies, at 1½d. per day. So long as the waggon was private property it was assumed that the waggon owner's interest would prevent undue detention, and undue user, consequently, of the companies' sidings.

In 1884 the Midland Company conceived the idea of purchasing the greater part of the coal waggons used upon their system, and belonging to merchants and coal owners. When they had done so the argument as to waggon owners' interest in non-detention fell to the ground. The rational mode of meeting the difficulty would have been to make a reasonable demurrage charge for the use of the waggons. There was some objection

to this, and the course adopted by all companies, under persuasion by the Midland Company, was to institute a charge for the use of sidings. Four days' standage were allowed, free of charge, and after that, 1s. per day was to be paid by the merchant. The imposition of this new charge was resented very warmly, and in 1886 a compromise was effected, which, on the face of it, appears to have been perfectly reasonable and equally fair to both sides. The time allowance was to remain at four days as before and 1s. per day was to be charged on all extra days, but the charge was to be made, not upon each separate waggon, but upon the aggregate of the month's occupation. If a merchant's consignments in the course of a month came to him loaded in 100 waggons, he was held entitled in that month to 400 days free standage, and upon the excess of that total only was he to be called upon to pay the daily rent of 1s. Thus, one day with another, he would be in constant occupation of about 100 yards of siding. Now, upon his 800 tons of monthly traffic he would have paid exactly £10 for station terminal, making the yearly rent—if it is to be so called—of a mile of siding £2,112. There is ample profit upon this, but the merchant was willing to pay at the rate of £15 per year for every six yards more which he occupied, making £4,395 per annum per mile of siding.

The companies were not content with this: in 1895 they reverted to the original system of making the charge on each separate truck, but they reduced the daily rate to 6d. The effect of this would be that, whereas under the old system the merchant would keep within his allowance of 400 days by discharging as many waggons

in two days as others were kept for six days, under the new system he would have to pay for some 200 days at 6d. which formerly escaped payment altogether.

As an illustration of the mode of working, the Midland manager stated that in one week in 1895 they had 10,350 waggons available for fresh traffic, whereas in the corresponding week of the year before they had only 300. In certain places named, the receipts in 1894 amounted to £230 and in 1895 to £156.

On this evidence the Court held that increase of charge was not proved, not taking into account the fact that 10,000 waggons had been withdrawn from the traders' use.

The traders, in other cases, gave evidence that, as the traffic was actually worked, they had large monthly sums to pay, when formerly no payment was due, and that, with it all, they had about half the accommodation they had had formerly.

A siding capable of accommodating forty waggons would cost in interest, repairs and rates, say, £60 per annum; the proposed charge of 10s. per day would work out (Sundays being excepted) to £300 per annum.

In the chapter on "Conditions" it was suggested that the form of consignment notes should be approved by the Board of Trade.

The same approval should be required to all notices of a general character made by the companies in modification of existing charges. Under any circumstances authority should be given to the Board of Trade to reopen the question of siding rent charges which was passed over when the Provisional Order Acts were under pre-



paration upon the plea of the railway managers that general regulations could not be made fairly applicable to a case of this kind. It is quite possible that the companies might accept the intervention of the Board of Trade on the siding rent question without the necessity of further recourse to Parliament.

The following are the considerations which form the basis of this opinion: 1. The charges and conditions relating to so-called siding rent, owing to the united action adopted by the companies, have now assumed the universal character which fits them for general legislation, and they cease to belong to the category of special or exceptional charges suitable only to be dealt with by arbitration. Neither by the companies, the traders, nor the committee has the question ever been dealt with otherwise than as one of a general character, and in no case have the special circumstances of any one trader's traffic received so much as a passing consideration. If the charge is to be a general one, Parliament has devolved the duty of proposing suitable legislation upon the Board of Trade, and that department is the only body who has the knowledge and the means of making this particular item of charge consistent with, and an integral portion of, the monumental legislation embodied in the Provisional Order Acts, 1891-1895.

2. If the Board of Trade were really misled, as the traders think, by the asseverations of the companies that the question was one unsuited to be dealt with by general regulations, and if, in consequence, they delegated their duty of general legislation to arbitrators, who confine themselves to technical legal evidence and decide each

individual case on general principles, without considering any at all of those which formed the main ground for the recommendations of the Board of Trade to Parliament, the Board would certainly be willing to correct any injustice resulting should they come to the conclusion that injustice has, in fact, resulted.

3. And, similarly, the Board of Trade know how far the discussion and negotiations at the inquiry proceeded upon the basis of maintaining the *status quo* of both parties. If the principle of the Provisional Orders was that on the whole no substantial gain or advantage was intended to accrue to either side, they would not look with approval upon a device by which a general regulation was withdrawn from their cognisance and then forthwith promulgated by the companies on their own authority, and with their existing and agreed charges so increased that one section of traders has been willing to expend £20,000 or more in the vain attempt to bring back the state of affairs to that existing when the Parliamentary schedule was framed, so they think, to perpetuate it.

4. Similarly, again, the Board of Trade would know, although no Court or arbitrator can possibly do so, whether a continuance of the then existing user of the sidings was contemplated when a charge of 3d. per ton was proposed to Parliament as a reasonable average terminal upon coal traffic. A vast amount of statistics was presented to the Board of Trade to inform them as to the actual cost of mineral sidings. If the 3d. terminal was approved by them upon evidence that it was necessary to provide siding accommodation for an average of four days for every truck of coal, it seems reasonable to suppose that

a smaller sum would have been sanctioned if one-half or one-third only of the accommodation was intended to be allowed as soon as the statutory terminal had come into operation.

5. The term "rent" presupposes in itself some sort of relation between the value of the accommodation occupied and the charge made. This relation was preserved under the old system, when a specified proportion of siding accommodation was allotted to a fixed quantity of traffic; but a reasonable sum for "rent" is changed into an arbitrary "fine" when it is calculated upon the accidental circumstance of the arrival or departure of certain specified waggons. If a trader occupies the space covered by 100 waggons for a month, he is called upon to pay nothing for the rent of the siding if he puts the company to the trouble and expense of changing each one daily, but if he keeps one set of trucks standing still for a whole month and puts the company to no expense or trouble whatever, then the reasonable "rent" payable for the use of the siding has been found to be £75. It is claimed accordingly that the annual "rent" is due to increase from the one extreme of *nil* to the other of £900 in exact proportion as the expense and trouble of the landlord is found to diminish.

Nothing so inconsequential as this is to be found in any part of the revised railway and canal schedules, which, on an experience of over ten years' duration, have been shown to be a model of impartial compromise attained by the application to them of ordinary common-sense and full commercial knowledge.

It is upon the foregoing conclusions that the writer

ventures to suggest that these regulations, though held not to be *legally* unreasonable, are none the less out of character and inconsistent with the recent legislation, which has redounded so greatly to the honour of the Board of Trade, and that, if approached in a proper manner, that department would be willing to assist in effacing from it the blot with which this important work of theirs has by degrees become disfigured.

## CHAPTER XV.

### COLLECTION AND DELIVERY.

THERE is no point of railway practice which has given rise to greater friction in the whole administration of railway traffic than the persistent steps taken by the Northern group of railway companies to monopolise the business of town cartage. The method adopted seems to be an open contravention of every principle which guides the law of traffic, an infringement of all the regulation Acts which bear upon the subject, and a distinct breach of faith towards the Board of Trade and the public upon the question of publication.

In January of 1907 the case of *Pickford v. London and North-Western Railway Company* was heard by the Railway Commission.

The *World's Carriers* is a monthly journal devoted to transport. In view of the importance of this case to their subscribers, full details of the evidence was published in the February number, and in later issues the arguments of counsel and the separate judgments of the three Commissioners were given.

The only direct issue at the trial was the sufficiency or insufficiency of the rebate allowed on collected and de-



livered rates when cartage was not performed by the company. In a series of articles, commencing in July, 1907, the history of the long conflict between railway companies and carriers as waged in the Law Courts is told in that journal. Interesting as the story is, it is not proposed to repeat it here. It seems to show that in the matter of cartage, at least, they do things better in Germany. There railway companies are not allowed to undertake cartage, but arrangements are made which appear to work smoothly enough for the delivery of traffic not consigned to any particular carrier. On this point the German method seems to work better than the British and to be well worthy of imitation or adaptation in this country.

The complaint made here is that, in those cases where collected and delivered rates are alone quoted in the station rate books, the companies require payment, in the first instance, of the sums charged by them for cartage at each end of the railway transit, professing an intention to allow "rebate" when cartage service is not rendered. They have their forms for the claim of rebate and these must be duly filled up in the manner prescribed. The effect is this: if the consignor does the cartage at the forwarding end and the consignee pays the charge, neither of the two can obtain the rebate; the consignor cannot claim it because he has not paid it, nor been charged with it; the consignee cannot claim it, because he did not perform the cartage and has no right to demand payment for work not done by him. Possibly where the freighter has a ledger account with the company these matters may be equitably adjusted, but in all other cases the companies

retain the charge made for the non-rendered service. In the case of traffic at the London docks, the sums charged and retained for cartage services not rendered would amount to as much as £50,000 per annum. In many cases the amount added to the rates is greater than the rebate allowed, and what is retained is a sum which the trader has been compelled to pay for no consideration or service whatever.

The fact that this is so is, at least, the opinion of Sir James Woodhouse, who, in his judgment in Pickford's case, after referring to the fact that the Birmingham to London rates had been alleged by the company on four different occasions to be made up in four different ways, says :—

Now there are, as I have said before, in fact and in practical operation no such allowances as 3s. 2d. and 1s. 10d.; and, looking closely at and contrasting these methods of distribution, I arrive at the conclusion that the object was, not to show that the amount really included in the charge for cartage at Birmingham was at least 3s. 4d. I have carefully weighed all the explanations and alternative suggestions, but this is the only one that seems to be rational and clear. Again, a striking diagram was put in evidence by the applicants which showed that at stations between Birmingham and Northampton, after allowing to the company out of the total aggregate rate their maxima for conveyance, station terminals and service terminals, there was a balance (which could only be assigned to collection and delivery) considerably in excess of the rebates allowed.

Take for example Birmingham to Maston Green—total charge 12s. 6d. The maximum for conveyance and terminals is 9s. 2d., leaving a balance of 3s. 4d. for cartage in Birmingham only (for the company admittedly do not cart at Maston Green), and yet 1s. 6d. is the only rebate allowed.

Again, Birmingham to Northampton, total rate 29s. 9d. Of this the conveyance and terminals are 23s. 1d., leaving a balance of

6s. 8d. Now, we know that 3s. 4d. is the cartage rebate at the Northampton end, and, therefore, the remaining 3s. 4d. is left as the cartage allowance properly attributable to Birmingham, for which only 1s. 6d. is in fact allowed. Other similar examples were also referred to. The defendants, in order to rebut the applicants' contention that the admitted balance of the rate could be attributable only to cartage allowance, suggested that there had been overcharges on the other services; but I do not think, on a minute and careful examination of the evidence, oral and documentary, that that is a reasonable interpretation, and I am driven to the conclusion, in the absence of any better explanation than was afforded by Mr. Partington, that the company do in fact charge in their rate more for collection than they allow in rebates.

It is only fair to add that Mr. Justice Bigham and Mr. Gathorne-Hardy did not concur with their colleague on this point, and decided it, with all others, in favour of the railway company.

In cases where the companies do, in fact, charge more for cartage than they allow for rebate, they are acting, as aforesaid, in entire contravention of the law of railway traffic.

(a) They infringe the law relating to monopoly; as Lord Chief Justice Cockburn puts it:—

The real question here is, whether the company are not, under colour of a charge for carriage upon the railway, making the complainants pay for a service which they do not require at their hands. What right have the company to compel all the world to employ them to collect and deliver?

(b) They are infringing the law of undue preference, for they are preferring themselves against all other carriers on their railway.

(c) They are infringing the law which requires them to afford all reasonable facilities in their power for the re-

ceipt of traffic, for it is not affording a "reasonable facility" for the receipt of traffic if they refuse to receive it at all, except upon payment of cartage or other charges to which they have no claim.

(*d*) They are infringing the provisions of their special Acts by charging more than the authorised maximum in the great majority of cases.

(*e*) They are acting in breach of their statutory contract when they refuse to receive traffic for conveyance on the railway, except upon payment of unauthorised charges.

(*f*) They are acting with disrespect towards the Court of the Railway and Canal Commission, who decided this point against them in the case of *Smith and Forrest v. London and North-Western Railway Company*.

(*g*) They are acting in open disobedience to the statute which orders them to quote station to station rates in their station rate books.

(*h*) They are acting in breach of good faith towards the Board of Trade, who only absolved them from publishing their hundreds of millions of increased rates in 1892 in consideration of their undertaking to publish station to station rates at the stations and collected and delivered rates at the receiving offices.

(*i*) They are acting in breach of good faith towards the Board of Trade and Parliament who in 1892 would not have sanctioned the right to charge cartage had they not been led to believe that the charge would only be levied when the service was performed.

(*j*) They are acting in contravention of the Traffic Act of 1888, which restricts them to charges authorised by the

Provisional Order Acts, and these are clear in disallowing such a charge.

The greater part of what is said in the last paragraph is *primâ facie* obvious. The negotiations resulting in the undertaking referred to in (h) are stated in the chapter on "Publication".

As regards (i) and (j) it will be remembered that the Provisional Order Acts, 1891-92, were prepared in accordance with the routine prescribed by the Traffic Act of 1888.

Every railway company was required to prepare a new schedule of maximum rates and to submit the same for approval to the Board of Trade as a preliminary to the new schedule being adopted by Parliament as the special Act of the company presenting it. At the public inquiry held at Westminster by the Board of Trade strong objections were taken by associations of traders to the form of the companies' demands.

As regards cartage the schedule of the London and North-Western Railway Company ran thus:—

3. The company may charge such reasonable amounts as in case of difference shall be determined by the Railway Commissioners in respect of the following matters: (B) The Collection or Delivery of Merchandise.

The companies had already instituted the practice of making charges for cartage not performed, and the Lancashire and Cheshire Conference and other associations took exception to the generality of the section, foreseeing then, pretty clearly, the danger of the events which have since actually happened. The grounds of their objections were:—

(a) The company might claim to make cartage charges whether they performed the service of cartage or not.



(b) The company might claim the right to perform the service whether the trader required them to do so or not.

(c) The Railway Commission was a tribunal far too expensive and unpractical to be entrusted with the determination of such matters of technical detail.

(d) The word "reasonable," as construed by railway companies, had become devoid of meaning.

As regards cartage it was asked that the charges to be made at each station should be set out in the rate books of that station.

The Board of Trade and the Joint Committee in Parliament both acquiesced in the view submitted by the companies that there might be some difficulty in setting out the cartage at each station, although what the difficulty might be, the traders could never, for the life of them, see. What it was or might be has never been explained, neither then nor since, but the suggestion was rejected, and, as it turns out, most unfortunately. Precisely what was anticipated has come to pass; charges are made for cartage, and the companies refuse to say, either before they make the charge or after, what it would be or what it has been.

Although the Board of Trade and Parliament did not accede to the traders' view that cartage rates should be published, due regard was paid to the objections raised under heads *a*, *b*, and *c*, and as to these the Provisional Order Acts provide:—

(a) The charge is authorised to be made when the service is rendered.

(b) The service shall not be rendered when the trader does not require it,

(c) Differences shall be determined by an arbitrator to be appointed by the Board of Trade.

(d) The charge shall be by way of addition to the tonnage rate.

These modifications were proposed to the traders by the Board of Trade, and it was only because of their introduction into the Provisional Order Acts that the traders' objections to the companies becoming carters were withdrawn, and that Parliament for the first time allowed, as a general principle, the right of railway companies to compete for town cartage with individual firms of carriers. No sooner are the Acts of Parliament passed than every stipulation which the traders succeeded at great cost in having inserted, is studiously disregarded: the northern companies do everything which the Lancashire and Cheshire Conference objected to, and when an arbitrator is appointed it is the Railway Commission.

## CHAPTER XVI.

### DAMAGES.

By many of the earlier judges the promotion of a special Act in Parliament, followed by the construction of a railway as authorised, was looked upon as of the nature of a contract between the promoters on one side and the Legislature, acting on behalf of the public, on the other. Lord Chief Justice Jervis says:—

From these several enactments it appears clearly to have been the intention of the Legislature that the parties incorporated should be empowered to construct the railway, and hold it as their property, and derive certain profits from it, but that every member of the community should have an equal right to use it on the terms prescribed by the Act, and that the payment to be made for such user, whether under the denomination of rates or tolls, or charges fixed by the company, should be reasonable and equal to all persons, without reference to the particular advantage to be derived by any individual, or class of individuals, from such user. And it is to be observed that the language of these Acts of Parliament is to be treated as the language of the promoters of them. They ask the Legislature to confer great privileges upon them and profess to give the public certain advantages in return. Acts passed under such circumstances should be construed strictly against the parties obtaining them, but liberally in favour of the public.

According to this view the position is as though the company agreed with each freighter that in consideration

that he would pay the charges due on the transit of the goods, the company on their part would undertake to abide by all the provisions of the special and general Acts for the benefit and protection of the trader. If this is the nature of the contract which has been entered into, there can be no reason why a company should be absolved from paying to a trader the loss occasioned to him if the conditions of the contract are not duly fulfilled. In a few instances, when the companies formed a less important fraction of the State than they do now, and before they had consolidated themselves into the great power they have now become, damages were awarded against them when they violated the law of equal treatment.

In the early days of railways the companies treated rival carriers as *hostes humani generis* ; managers thought it was quite right to compel them to pay 11s. 3d. for the carriage of a parcel for which 1s. 11d. was charged to the general public.

In the opinion of Chief Justice Erle " nothing could be more reasonable," but other judges held different views, and when they found that a carrier had been compelled to pay illegal charges amounting to something approaching £10,000, they awarded £2,000 damages to his trustee in bankruptcy as compensation for the destruction of his business.

Baron Martin, while deciding that a plaintiff could not retain an award of £200 because his pleadings had not been drawn with the object of claiming them, concluded his judgment by saying that if a declaration were properly framed, alleging that the defendants wilfully

transgressed the law with the view of injuring a carrier, and claiming a monopoly of the business themselves, it was a question whether a jury might not give "vindictive damages". In the case before him the pleas had not raised any such issue.

These observations had reference to the Act of 1845, which required all charges to be the same under the same circumstances; at that date no law required the charges to be comparatively equal under "similar" circumstances.

The statute of 1845 that forbade "undue preference" generally, restricted jurisdiction in relation to it to a single Court, who were empowered to make orders only, and not to award damages when the provisions of the statute had been shown to be contravened.

It must be admitted that at that date it was more difficult to determine what was a "similar" rate when the distances were different, than it is now that a graduated scale of charge makes the comparison more practicable.

According to the scales of the Provisional Orders, a rate for 50 miles of 9s. 5d. is the equivalent of a rate of 14s. 5d. for 100 miles. If the 100-mile rate is reduced to 7s. 2d. for one firm, a like reduction of 50 per cent. should be made on the rate for the shorter distance if the trader can show that the one traffic is substantially in competition with the other.

When, as in the case of the Denaby Main Colliery and Pickering Phipps' ironworks, the railway manager deliberately alters the rates within a limited area knowing that dislocation of traffic must follow and intending that it should, there is no reason why compensation should not be awarded in respect of all damage done.



More difficulty might perhaps arise when the stations are further apart.

The following case affords an instructive illustration.

Certain refiners of petroleum did a large business in a district 100 miles distant, with a conveyance rate of 20s. per ton.

A rival company eighty miles further off, alleging sea competition as a means of infatuating the officials and depriving them of the full use of their ordinary faculties, obtained a rate of 10s. per ton, and took to themselves all the business of the first-mentioned company in the district, before the cause of the under-quotations was discovered. In this case, the company were vigorously competing against themselves and their unintentional preference was rectified when it was pointed out.

In such a case as this there would seem to be no reason why the railway company should not be called upon to pay the full loss occasioned by their error, even if it should amount to the total capital invested in their business by the petroleum company.

It may be remarked, in passing, that according to the principle of the decision in the case of Pickering Phipps the company were justified in what they did. It will be remembered that "geographical position" was the determining factor then, and that nearness to the market did not constitute "geographical position" within the legal meaning of the term, but that means of competition did.

When once the law is amended and made clear by abolishing such excuses as the above the right to damages will become more clear. It is submitted that a tribunal of the character of the Railway Commission is scarcely an

appropriate one for determining the amount of damage due. That Court, after hearing the facts, would decide whether or not the law of railway traffic had been infringed. If they find upon the facts relating to the transit that it has, the parties would probably come to a settlement as to the damages due, or they might agree to refer it to arbitration. Under all circumstances the inviolable charter of the trader in the case of pecuniary wrong should be his right to an ultimate appeal to a jury when other modes of assessment fail.

The Committee of 1853 thought that an award of damages should follow the infringement of the law. They were of opinion that in complaints of favour to one class of traffic the ordinary proceedings of the Courts of Law are unsuitable.

Recovery of nominal, or even substantial damages is no adequate satisfaction to a trader whose daily business is disordered or destroyed, and more stringent proceedings in Chancery are liable to be defeated by some colourable change of circumstances.

If once the Legislature could be brought resolutely to forbid preference of any kind, without providing loopholes of escape at every turn, and would make the damages payable commensurate with the injury done, three-quarters of the traders' grievances would be removed, since much else of what is done, is done merely by way of concealing or maintaining the preferences in operation.

## CHAPTER XVII.

### REASONABLE FACILITIES.

THE rendering of reasonable facilities to traffic was one of the earliest obligations imposed upon railway companies.

The statute of 1854 requires railway companies to afford all reasonable facilities within their power for the forwarding of traffic, for the return of trucks, for the interchange of traffic when the terminal stations are near—

So that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication and so that all reasonable accommodation may be at all times afforded to the public.

Traders have complained at different times of the refusal of facilities for the forwarding or interchange of traffic; apparently every form of obstruction has been complained of, every facility that could be imagined to come within the meaning of the section has been applied for, but nothing that traders can require has been held to be a reasonable facility within the meaning of the section. No such thing, it seems, exists; if a railway company refuses a facility the Courts hold that it is one which cannot be reasonable.

The section from which these provisions are taken is one of those unwieldy, interminable compositions, dear to the draftsmen of earlier generations, which no ordinary untrained intelligence can master without dividing it up and rewriting its separate parts. It defines, without a break and without a stop, the duties of railway companies, canal companies, and "railway and canal companies," in respect of local traffic, interchange of traffic, through booking, through rates, preference, prejudice, and facilities, in so involved a form that it is impossible to say how far one part is connected with or governed by another, and according as to whether it is so connected or not, an applicant will be held to lose or succeed upon his application.

In an important case it was argued on the one side that the section should be read as though it were divided into two, and on the other, as though it were divided into three; according to the method adopted the obligations of the company could be construed to be wide enough to cover, or narrow enough to exclude, the subject-matter of the dispute.

The Commission appointed under the Act of 1872 invariably took the wider view of their jurisdiction, with the result that their decisions were promptly overruled by some "prohibiting" Court.

The present Court is not subject

to question or review, nor to be restrained or removed by prohibition, injunction, certiorari or otherwise, either at the instance of the Crown or otherwise:

all of which treatment was meted out unsparingly to the

most admirable decisions of the late Sir Frederick Peel and his colleagues.

It would be difficult to find, in any branch of law, a more equitable, logical, consistent and loyal interpretation of the statutes provided for its administration than in the series of decisions of the Railway Commission between 1873 and 1889. Since that date a much more contracted view has been taken of the obligations imposed upon railway companies, and in the matter of facilities these have gradually dwindled down to absolute zero.

In the case of *Hall v. London, Brighton and South Coast Railway Company* the Courts overruled the Commissioners on the ground that a station formed no essential part of a railway; it was the business of the trading public, they said, to get their traffic on the railway by means of stations of their own, by private sidings or as they could. The Court of Session in Scotland and the Court of Appeal in England overruled the Commissioners on the ground that private sidings did not come within the scope of the Traffic Acts except where they were expressly mentioned. Between these two stools the traders come to the ground inevitably. In the case of *Cowan & Sons*, the Railway Commissioners, sitting in Scotland, decided that a station terminal could not be charged upon traffic delivered at the private sidings of the applicants, whereupon the defendants refused to deliver it there. On application to the Railway Commission the Court drew up the following order:—

1. That the railway company, in refusing to deliver coal at the junction of their railway with the Low Hill siding, have not afforded



to the applicants all due and reasonable facilities for the delivery of their coal traffic at the Low Hill siding.

2. That the railway company, in delivering coal at the private sidings of other traders near Penicuik, competitors in trade with the applicants, and refusing to deliver coal at the applicants' Low Hill siding, have given to such traders an undue and unreasonable preference and advantage over the applicants, and subjected them to an undue and unreasonable prejudice.

And this Court doth declare, etc.

It was not to be expected that such an order as that would be allowed to hold good.

On appeal to the Court of Session, it was held by a majority of five judges to two, that the provisions of the Traffic Acts did not apply to traffic destined for private sidings.

The Railway Commissioners have no power to enjoin things merely because they may think that they would be reasonable facilities; they are only entitled to administer the existing railway Acts and to enforce facilities thereby provided, where such facilities are refused.

Lord Young and Lord Moncrieff delivered judgments to the opposite effect, and pointed out, amongst other things, that the Act of 1894, so far as it dealt with rebate at private sidings, would be reduced to a nullity if a company might refuse to deliver traffic when a trader made claim to the rebate.

It is not merely the Act of 1894, but the whole series of traffic and regulation Acts, from 1854 onwards, which are reduced to nullity when decisions of this character are given and the Legislature does not pass an amending Act immediately.

Other Courts, at other times, have negatived the pos-

sibility of any imaginable facility being brought within the scope of the section under any circumstances which could happen in working.

It has been held that the Railway Commission have no power to require one company to take traffic for 100 yards over the lines of another, that not being of the nature of a reasonable facility; nor to require the company owning 100 yards of connecting line to allow traffic to pass over it; it is not a reasonable facility to require a company to take traffic over a dock company's lines to the spot where it can be delivered; if traffic cannot be exchanged at the exact point of junction of two continuous lines, it is not a reasonable facility to effect the exchange at the nearest possible point; when by an old agreement certain tram lines were to be worked by horses it is not reasonable to work them by locomotives when the tram line has been changed into a railway and the objecting company's own locomotives run over it. All these decisions have been given, but none of an opposite character, when a trader has sought to make use "of continuous lines of communication" and to have "all reasonable means of accommodation afforded him".

The Courts have decided that all these are not "reasonable facilities"; but no intimation has been given as to what is, or what, these facilities failing, can be the nature of the facilities which the Legislature had in view in enacting the statute of 1854 and specially appointing Commissioners to enforce it in 1872 and again in 1888.

As the law now stands (September, 1907) it appears that companies do not refuse "reasonable facilities for the receiving of traffic" when they decline to receive

traffic at their stations, but require it to come through their receiving offices or to pay rates as though it did.

To what extent a railway company can be ordered to afford facilities for traffic which require an outlay of capital is a question which has been much discussed. It is not one in which the trader is greatly interested. Such complaints as have been made have had reference principally to passengers and the accommodation provided for them. The law seems very clearly and equitably laid down by Lord Selborne, Lord Coleridge and Lord Justice Brett in their decision in the case brought by the Hastings Town Council.

What is now required is that the general principles laid down by the decision of the Court of Appeal in that case should be expressed in plain language and should become part of an amending Act.

Traders at local stations might be allowed to complain to the Railway Commission when the accommodation for goods traffic is inadequate, and if the Railway Commissioners find their complaint to be well founded the traders should have a *locus standi* before Parliament to ask that their deficient accommodation should be improved before further expenditure is sanctioned elsewhere.

## CHAPTER XVIII.

### LITIGATION.

THE attention of Parliamentary Committees has been repeatedly called to the unequal position occupied by railway companies and their opponents in a Court of Law.

In ordinary actions the personification of justice is figuratively provided with a balance, of which the scales before the hearing stand at an even level. But when redress is sought under the Traffic Acts against a railway company, the normal position of the balance beam is far from horizontal, the balance is already weighted with nine points out of ten in favour of the companies.

Parliamentary Committees have fully grasped the fact that there is inequality and have so reported, but they have not had the trying experience of conducting a trader's case from start to finish, and have quite failed to appreciate how great that inequality is, or to perceive how closely, under present conditions, the difficulty of obtaining redress approaches to impossibility.

One rough and ready means of estimating the extent of the difficulty would be to take the number of applications filed in the Court of the Railway and Canal Commission and to compare that with the number heard in

Court in which redress of any kind has actually been obtained. During the past four years, as mentioned in the introductory chapter, sixteen traders' cases have been heard by the Railway Commission, and the applicants have obtained some measure of success in two.

According to this standard of measurement no redress is available to the trader in seven cases out of eight of those in which his legal advisers have thought that the treatment accorded to him would warrant the interference of the Court. In addition to these the applications not proceeded with must be taken into account, and it becomes patent to every one that the burden of proof, as laid upon the trader when he seeks the protection of the Traffic Acts, is far greater than he can bear.

It is of the nature of a platitude to say that before any adequate remedy can be devised the nature and extent of the burden has to be sufficiently realised.

The advantages which a railway company possesses as against a typical trader merge one into another and are scarcely susceptible of specific enumeration.

Still, some of the various obstacles which confront a trader when he first embarks upon his legal adventure may be roughly classified.

1. The company is possessed of all the necessary knowledge, so far as material facts are concerned. A trader complains, let us say, that a rate of 10s. charged to his competitor constitutes an undue preference as compared with the 12s. 6d. rate as charged to himself. The case, as the trader knows it and looks at it, seems perfectly simple, and clear as the noonday sun. The company come into Court with corrections of his distances,



with modifying conditions attached to the respective rates, but, above all, with a volume of statistics relating to other rates comparable with the 10s. rate on the one hand and with the 12s. 6d. rate on the other. All these are sprung upon the applicant at the trial, and he and his advisers are helpless when, in common parlance, their heads are battered with them.

A specific remedy for this particular inequality, and one within the province of the Court to adopt of their own initiative, would be to make a rule that all statistical documents intended to be relied upon should be filed in Court and copies supplied to the other side one month before the date appointed for the hearing. The rule should be made unalterable in its rigidity, that all evidence capable of being so supplied, and not put in, in due course, should be rigorously excluded, and all attempts to introduce it, indirectly, if objected to, should be disallowed. Furthermore, the Court should have power, at the request of either side, to order such statistics to be referred to an expert, whose report as to the accuracy and effect of them should be accepted by the Court as final.

In a report of the case of *Smith and Forrest v. London and North-Western Railway Company* it is stated that the Court was presented with a volume of some 250 to 300 pages of statistics from which to extract the materials for a decision on the points at issue.

It is altogether unreasonable that the time of a learned judge, valuable in other Courts and to other suitors, should be occupied in interminable discussions as to the accuracy and effect of such documents as these. Nor is it right that the time of the Court, as a whole, including

counsel, solicitors, witnesses and the parties engaged in the following cases should be wasted while a futile examination takes place of documents needing ten days' study and handed in not ten minutes before the time when counsel has to point out all their demerits or admit their accuracy just as they stand. When two important cases follow one another it may well be that the time of the witnesses and others in attendance may be valued at 500 guineas per day. The result is that nothing is done efficiently, the accuracy of the calculations is not completely tested, and the points of law and principle arising are seldom thoroughly discussed and settled.

All this works steadily, uniformly and constantly to the disadvantage of the trader, who is conscious of the fact, but is far from being aware of the full extent and seriousness of it. Eventually his case is dismissed, but he never knows whether the railway figures were really substantially tenable or not, nor how much he has lost through not having had them minutely investigated.

A striking illustration of the effect of statistical evidence was afforded by the last-mentioned case where the railway companies sought to defend a 5 per cent. increase in rate by means of a series of tables put in for the same purpose in the coal cases of Ricketts, Smith & Co. and others. The applicants in those cases were routed, because, for want of railway expert evidence, they could do nothing to diminish the effect of the railway statistics. The same tables were put in again, in the case of Smith and Forrest, and counsel contended that they formed an answer to that case also, that they had been before the Court on previous occasions, had resisted every attack made upon

them and had come out "unscathed and unchallengeable".

After adjournment and expert study of the tables the applicants shattered them to pieces before the Court and won their own case with the splintered fragments.

This is probably the only case in which this has happened. Usually, especially when no very large sum is at issue, plaintiffs object to the cost of adjournment, and they object to the cost of expert examination, although they feel helpless at the vast array of figures marshalled against them. Possibly over half of the traders' lost cases might have been won had the railway statistics been ordered to be presented before the hearing, and had they been submitted to expert examination before being admitted.

2. The next point of undue advantage which the companies possess over a trader applicant consists in their supreme knowledge of the law in any manner connected with the controversy which has arisen. The importance of this is extreme, and is probably ten or twenty times greater than litigants are aware of. The shorthand notes of all cases are duly printed and are available for every railway company's guidance, but are altogether unattainable for any trader litigant. The principal railway companies have all a trained staff of solicitors, trained specially, that is, in railway law, whereas the trader, as a rule, knows but a small part of the law of his own case, nothing of that to be made against him, and he has no access to any of the interlocutory judgments, if they may be so spoken of, given in the course of the hearing of previous cases. In these, quite possibly, it may have been held

that the section on which he has been relying has either no meaning or that the meaning is the reverse of that he attributed to it. Frequently he takes the initiative in the controversy himself, when he may be safely relied upon to get it upon a wrong footing at the very outset.

The case of Watson, Todd & Co. affords an illustration of this. The plaintiff's first demand put the claim made on a technically erroneous basis, and the fatality of his original wrongly conceived letter pursued him through all his proceedings to the Court of Appeal and was the cause of his getting a decision against him at every turn. As the number of the decisions and of the casual *dicta* of the Courts upon the Traffic Acts increases, the position of an applicant who has not access to the notes of them becomes daily worse.

The sole remedy for this overwhelming disadvantage lies in the repeal of the whole chaotic mass of traffic legislation and the codifying it into one comparatively simple and possibly-intelligible Act.

The traders do not move towards drafting a codifying Act partly because the expense deters them, and partly because they do not know what they lose through the incoherence of the traffic statutes. The railway companies naturally prefer things as they are, because in the wild confusion of the existing legislation, and the contradictions which the case law has engrafted upon it, lies their main bulwark of safety. The Government is unable and unwilling to do away with a state of things which, so far as it concerns the trader, falls little short of a public calamity. A Liberal and democratic Government might be willing to regulate the railway monopoly for the public

benefit, but cannot afford the £1,000 which it might cost; a Conservative Government would be reluctant to infringe upon the shareholders' vested interests; and if either would be willing to prepare a code they cannot do so, since the constitutional principles of the Treasury would require the work to be entrusted to law officers who have had no experience in this particular subject, who do not know wherein the traders' grievances lie, nor what would be the effect of the innocent-looking provisoes which railway advocates would desire to have introduced into the framework of their measures.

The remedy of codification may be looked upon as chimerical, unless some ray of light should unexpectedly illumine the minds of the traders and enable them to realise the loss which accrues to them through incomprehensibility of legislation. Amendment is but a makeshift, and from the point of view of simplicity, it tends to make the confusion worse confounded than before.

A minor remedy would be provided were the judgments of the Commissioners to be printed month by month as they deliver them. This would afford some assistance to litigants, pending the publication of the valuable reports of Railway and Canal Traffic Cases by Brown, Macnamara and Neville.

3. The companies have a further great advantage over all applicants, whether individuals or associations, by the possession of unlimited means. No expense, however great, deters them from seeking to obtain any advantage, however small. In the preparation of their case they have the advantage of having the great bulk of the evidence in their own hands. They supplement this, without regard



to cost, by the evidence of the officials of other companies, making their case as complete as is possible at every point. The trader, whose evidence is imperfect at the outset, cannot possibly afford the expense, under any ordinary circumstances, of making it complete. The question of funds is one that always weighs heavily against the trader, and is due to receive much more consideration than it does when methods of procedure are under examination. It is easy enough to write down in a draft bill "the Railway Commissioners shall have jurisdiction to determine"; but when this is the only remedy provided for a minor cause of complaint, it is only another way of saying that the particular complaint must perforce remain unremedied.

The only possible way of meeting this inequality is to provide a more accessible and more economical tribunal for complaints not involving any issues of great magnitude. Something of the nature of a Standing Board of Arbitration is required to enable a trader to obtain a settlement of his dispute when the sum involved does not exceed, say, £500.

4. In addition to all that has been said before, the companies possess the never-failing advantage of unwearied perseverance. The interminable continuance of a long drawn out suit is as nothing to them, but it is everything to a trader, even to such a trader as the London and India Docks Company. A trader may have gained some portion of what he considers his due in a Court of first instance. His gain may be worth perhaps £50 per annum to him, and his costs in getting it may have amounted to £800. Let it be pointed out to him

that at the cost involved in an adjournment, he might probably obtain another £20 *per annum*, and £20 *per annum* more as the result of an appeal on a point of law, and there is hardly one trader in ten who would move a single step further in the litigation. The two points raised and abandoned are treated in subsequent cases as having been duly weighed and found wanting, and henceforward, with other similar ones, they remain as stumbling-blocks in the path of every successor.

In every case, for want of funds or for want of time, the equivalent of funds, important points are yielded by the trader without a struggle. Every disputed point given against a railway company is contested again and again in every Court and in every manner open to them; and although the companies may be defeated everywhere they continue to do the same thing, calling it by another name, or putting it in some other form, precisely as they did before. Their pertinacity always bears good fruit for them, because, after a while, shorter or longer, as it may happen, one decision is given in their favour, and that question remains settled for ever.

So the Parliamentary reports point out that railway companies have an interest at stake so much greater than that of any individual that they are prepared to continue litigation to an extent which, to an ordinary suitor, would be altogether appalling.

The fact that traders are always reluctant to go on, whilst railway companies are never willing to stop, is a potent element in the destruction of the Traffic Acts. This effect is so little considered, and it is in reality of such supreme importance, that it is desirable to quote

*verbatim* the view of the Select Committee of 1882 upon the overpowering advantage which railway companies possess in their determination to continue litigation in eternity. They say:—

5. *Difficulties in the way of obtaining Redress against Railway Companies.*—Traders complain, and the complaint has been supported by many witnesses, that it is not for the interest or pecuniary advantage of almost any trader to take a railway company before the Commission

(1) Because the expense of obtaining redress is so great that the trader, even when completely successful, will almost invariably sustain pecuniary loss.

(2) Because experience has shown that railway companies are prepared to litigate to an extent which few traders would dare to contemplate; and

(3) Because railway companies have so many opportunities of putting traders to inconvenience and loss by withholding ordinary trade facilities and otherwise, that traders are afraid of the indirect consequences of taking a railway company into Court.

The evidence submitted to us shows that there is some ground for these apprehensions on the part of traders, and the consideration of their relative positions clearly shows that it is to the pecuniary advantage of a trader to submit to overcharges, or to suffer from undue preference to others, instead of taking a railway company before the Commissioners.

Perhaps no more instructive or illustrative case could be adduced than that stated by the chairman of the London, Chatham and Dover Railway Company.

Last year that company issued a circular stipulating for a special service tariff and tenders for the carriage of hops by the company.

According to this tariff the rate for hops from Sittingbourne, for example, was 36s. 8d. per ton, from which 5s. might properly be deducted for delivery in London, leaving 31s. 8d. as the charge for conveyance on the railway. On behalf of the hop-growers it is contended that the maximum legal charge by the company for conveyance from station to station is 18s. 9d., and if the contention is well founded, the railway company surcharged 12s. 11d. per ton.

The quantity of hops annually carried by the London, Chatham

and Dover Railway Company is about 4,000 tons. The alleged surcharge on this quantity amounts to an important sum, and this the railway company would have at stake in any action; but the surcharge to the individual hop-grower would hardly tempt any prudent man to litigation.

The Legislature cannot well compel an applicant to continue litigation when his funds and patience are both exhausted; but the framers of an amending Act should have ever present to their minds that complicated and cumbersome "legislation by reference" makes the law appear unintelligible and hopeless to the trader, and protects the railway companies in what they do amiss far more than it assists the trader when it professes to provide him with an illusory remedy.

## CHAPTER XIX.

### RETALIATION.

FEAR of the means of retaliation, amply possessed by the companies, deters great numbers of would-be applicants. In the case of *Howard v. The Midland Railway Company* a firm of agricultural implement makers obtained a decision from the Railway Commissioners declaring certain terminal charges to be illegal. In retaliation for such unseemly conduct on the part of the firm, the rates from Bedford were increased to so great an extent that Messrs. Howard had to pay £160 for the carriage to Thurso of a traction engine and steam plough, which at the old rates would have been carried for £68, the rate per ton being raised from 75s. 10d. to 178s. 9d., and generally it was stated by W. J. Howard the new rates caused a difference to his firm of £1,500 to £2,000 a year. The judgment of the Railway Commissioners concludes thus:—

These changes applied to no place but Bedford, and establishing, as they did, preferential rates as between other places and Bedford, and doing this for no other purpose but to retaliate on Messrs. Howard for claiming a terminal allowance, they were a distinct abuse of the powers entrusted to railway companies of regulating their charges for conveyance, an abuse, indeed, that was so plain that on the second day of the hearing the counsel for the companies informed us that, foreseeing we should have no alternative but to



set aside such rates, he would not say a word in defence of them and that the company, advised by him, had resolved to cancel them forthwith, and to readjust all accounts from November upon the footing of the rates which had been in force up to then, and which would at once be reverted to.

In the same manner, in the recent case of *Cowan & Sons v. North British Railway*, mentioned in the chapter on Reasonable Facilities, when Messrs. Cowan obtained a decision from the Commissioners that they were entitled to a larger rebate than the company was willing to allow, the company refused to deliver traffic at their sidings as an object-lesson to other siding owners in the neighbourhood.

Seeing that retaliation is possible, and that traders generally consider that in the case of complaint it is quite probable, stringent provisions should be embodied in an amending Act awarding, say, treble costs and treble damages to a freighter from whom previously given facilities are withdrawn after action brought, complaint made or evidence given.

## CHAPTER XX.

### COSTS.

THE costs of an action in the Court of the Railway and Canal Commission are prohibitive when the amount at issue is not large; the conciliation clause is inoperative unless the grievance is local.

It is not so much the modification of any existing rules as to costs which is needed as the formation of a tribunal capable of dealing with an intermediate class of case in an inexpensive and informal manner.

At the desire of traders an Act has been passed withdrawing from the Commissioners the power to award costs and consequently leaving each party to pay their own. The main object was to protect the trader from the liability to pay two, three or more sets of costs when it became necessary to join two or more companies as defendants.

The Act applies only to "proceedings before the Railway Commissioners" and consequently not to the costs of an appeal. It is desirable to make the rule applicable to all proceedings taken under the Traffic Acts. An exception in the Act provides that costs shall be allowed when either the claim or the defence has been "frivolous or vexatious". The Act was passed in 1894; we are

now in 1907 : no costs, as yet, have been given to any trader although the frivolity and vexation of many defences has been considerable.

It is constantly the practice of companies in filing their answer to an application to conceal the real defence to the utmost of counsel's ability and, instead of setting it out, to fill the pleading full to the brim with frivolity and vexation. Any through-rate application would supply abundant examples. In an application for an order requiring a company to allow the construction of a siding the answer contained, amongst other frivolities, the assertion that the place chosen for the junction was on "an inclined plane," the fact, so described, being that the line at the point of junction had a gradient of about 1 in 100. Applicants were put to considerable expense in bringing witnesses to show that gradients are not "inclined planes" within the meaning of the Act and were then told that the objection would not be pressed.

Here again the grievance is all on one side ; no trader's adviser would dream of wasting his client's money by pleading matters which he knew to be foolish, but on the other side the companies' answers are full of technical objections only inserted to cause vexatious trouble to the applicant and intended to be withdrawn the instant that the Court takes cognisance of their nullity. It would afford substantial relief to traders if the expression "frivolous and vexatious" were defined to cover overruled technical objections and if the Act allowed a due proportion of costs, one-quarter or one-half of the whole, when any such are pleaded.

But the whole question of costs is one requiring care-

ful consideration and adjustment ; at present it forms one of the greatest of obstacles to the trader claiming what is justly due to him. Under the head of costs would be included the expenses of witnesses. Here, again, the necessity becomes apparent of some investigation, intermediate between the informal discussion at the Board of Trade and the strictly formal hearing before the Court of the Railway Commissioners.

This, and every other consideration connected with railway traffic, all point in the one direction of an arbitration tribunal, who would hear the case locally and who would have power to regulate the amount of formality to be imported into their procedure.

## CHAPTER XXI.

### ENFORCEMENT OF LAW.

IN the last chapters reference has been made to the great expense and labour which attend individuals in any endeavour to avail themselves of the provisions of the Traffic Acts. It is not denied that these have been and still are of great utility. Limits have been set to the vagaries witnessed in countries where railway law is more ineffectual than here, but, for the reasons pointed out, the Acts have gradually become almost a dead letter for individuals. The law professes to protect the trader ; it purports to provide him with a tribunal solely constituted with this object. It really does little more than lure him on, by deceitful promises, to incur great expense and trouble, only to rivet the chains of oppression more tightly than before. With traffic regulations covering 300 pages of statute and a public expenditure of many thousands per annum the traders have been granted relief in two solitary cases during the past four years. Mountains of labour have been endured in order to obtain even these two little ridiculous mice. Writers in the railway interest point exultingly to the minuteness of the relief granted and to the absence of complaint which follows naturally upon the dismissal of all important applications. All



this is treated as proof conclusive that railway companies, like kings, can do no wrong. Mr. Pratt, on behalf of railway companies generally, "reminds" Mr. Lloyd-George that he is completely in error when he suggests that dissatisfaction exists amongst traders. On the contrary, the diminution of formal litigation and of informal complaint afford evidence of the satisfaction of traders throughout the country. There have been deputations, it is true, complaining of oppressive conditions and calling attention to the overpowering monopoly threatened by the encroachments of the Railway Association. But the companies have a complete answer to all these vague suggestions, and it is Mr. Pratt who is put forward to give it.

Mr. Lloyd-George thus expressed himself:—

I may say that in the near future we will have to reconsider the whole question of railway rates from beginning to end. I have been very much impressed since I came to the Board of Trade with what one speaker has called the great and growing discontent with the whole system, and I am also impressed with this: I meet some German traders from time to time, and they impress on me their greatest possible satisfaction with their railway system;

and he continued:—

I think you have made a case for a grievance. I think you have also made a case for something being done, and done at the earliest possible moment, to redress it; and you may depend upon it that, as far as I am concerned, I will use all the influence I possess with the Government in order to induce them next year to deal effectively with this question.

Mr. Pratt's treatise on "*German versus British Railways*" is written to refute these opinions of Mr. Lloyd-George. During the years 1904 and 1905 there were not

so many complaints to the Board of Trade as in previous years. The total number for the two years was 146.

Referring to this Mr. Pratt says :—

With these striking figures Mr. Lloyd-George's reported statement, "I have been very much impressed since I came to the Board of Trade with what one speaker has called the great and growing discontent with the whole system," is in complete disaccord.

It might with all due respect to the present occupant of the post of President of the Board of Trade be suggested that he should not thus ignore the published records of his own department, and that, following in the footsteps of his predecessors, he should refrain from being led away by *ex parte* statements by interested persons, and preserve rather an open mind upon matters affecting such enormous interests until they have been investigated by an impartial tribunal.

The traders' reply to this is, that the matters have been investigated at great length by the Committees of 1872 and 1882. All that the traders want now is that the recommendations of those Committees should be thoroughly carried out. If the Act of 1888, taken in consideration with the legal decisions interpreting it, carries out the views of these Committees there is nothing more to be said; if not, an amending Act should be drafted with as little delay as possible.

Mr. Pratt thus accounts for the semblance of dissatisfaction which has led Mr. Lloyd-George astray from the paths of his predecessors :—

Naturally, all traders like to pay as little as possible in the way of railway rates. But the present agitation in reference to owner's risk rates was initiated, in one district, by a comparatively small number of traders, who have, however, managed unduly to magnify the question by obtaining the assistance of Chambers of Commerce, and through them, that of the Mansion House Association. The

officials of these bodies are, no doubt, eager to justify their existence by helping to maintain a continuous flow of grievances against the railway companies, and, with a "sympathetic" President of the Board of Trade, such a task is rendered all the easier of accomplishment.

These two paragraphs, upon the last page of Mr. Pratt's treatise, sum up the railway answer. If this is the best thing railway companies can say in opposition, it is clear that the traders' legislative protection requires amendment.

There are four main reasons for the ineffectiveness of the existing mass of legislation apart from the fact of the mass itself.

1. The principal cause of inefficiency lies in the indefinite character of the legislation. When the main highways of the kingdom are entrusted to the hands of private companies, the two principles of "equal treatment of all traders" and of "reasonable facilities for traffic" ought to be legislated for in peremptory and unmistakable language.

If the lawgivers themselves are in doubt as to the paramount claims of traders under these two heads, legislation upon them is useless or worse.

The legislation of 1854 was hardly plain enough. It ordered facilities, it forbade preference; but it introduced the vague terms of "reasonable," "due" and "undue," and above all, it provided no compulsive penalties in the case of disobedience.

If a company obtains from Parliament the exclusive right to work a line of railway in their own interest there would seem to be nothing unreasonable in their being required to provide all facilities "necessary" for receiving the traffic they have undertaken to convey, nor in their

being required to give no preference of any kind to anybody, either in their own interest or in the real or imaginary interest of somebody else.

The 1888 Act rings with a still more uncertain sound ; no one can say, it is hardly possible to guess, what it really means. If the intention is to justify the defence of "competition" and the defence of a vague "public interest," it is but a snare and delusion to the trader and he would be well advised to let it alone. No Court could work it, even if limits were set to the companies' interest in competition, and if some definition were attempted of the "public interest".

A whole chapter has been written upon competition without doing more than to touch the fringe of the subject. The ramifications of it are infinite. It is desired to add one or two words as to "public interest". This is a thing absolutely incorporeal, intangible, unmeasurable and incalculable, without dimension, weight or substance of any kind. A money value can be put upon a trader's business which is being destroyed by preferential rates : a value can be put upon the orchards of Kent as they stand now before being destroyed by foreign competition. But who can put a money value on the interest the public may have in being served by A instead of by B ? or in being supplied with foreign fruit instead of with English ? It may be a farthing, it may be a million pounds, it may be anything or everything, nothing or less than nothing. Most probably the last, as in the London Docks case.

When it is a question of the preference of ports, as Mr. Justice Wills truly says, the public interest of Liver-

pool is not the public interest of Bristol; the public interest of Bristol is not the public interest of Birmingham. How can it be possible that a Court or a judge can well and truly weigh one against the other? And when the weight of all has been thought to be ascertained, how is it possible to say that the result works out to one half-penny per ton per mile for the conveyance of grain from Bristol to Birmingham and to one penny per ton per mile for the conveyance of grain from Liverpool to Birmingham? Another Court, on the same evidence, might equally well decide that the penny should apply to Bristol and the halfpenny to Liverpool. Both would be equally right and equally wrong. The rule of law that rates comparatively equal should be charged from both ports is capable of being understood and of being enforced; but a proviso that the public interests of Bristol, of Birmingham and of Liverpool are to be calculated by the Court, and that the balance is to be debited or credited to the applicants or to the defendants, as the case may be, removes the whole subject-matter from the region either of law or of common-sense and transfers it to that of Wonderland. The statute does not say this, but what it does say is as vague and indefinite as the "public interest," and quite as capable of having any or every meaning placed upon it, this one included.

2. Existing statutes fail of their effect by the form adopted. The law is contained in a series of amending and repealing Acts, inconsistent with one another, contradictory and overlapping. Besides this difficulty, before pointed out, the subject of traffic management does not lend itself readily to the ordinary form of legislation.



The framers of traffic Acts cannot anticipate all the wiles of the companies, state them and forbid them all, one by one, specifically. As Lord St. Leonards says :—

It is impossible to sit down and foresee every case in practice, and the Act having specifically forbidden one form of inequality, forbids generally a charge which is an advance or a lowering to the benefit of one at the expense of the other. It does not matter how the companies make their charge, whatever shape their charges may assume, however they may attempt to disguise what they are doing; if it is an infringement of the rights of one to the benefit of others, the Act strikes at the very root of that and prevents the inequality of the toll.

His Lordship takes the broad view of the Act that when one thing is anticipated and forbidden, the Act intends to forbid other things unanticipated, but similar. Unfortunately for traders the narrower view usually prevails, that everything not distinctly forbidden is implicitly sanctioned.

The form to be adopted in dealing with a matter so complicated as railway law, is that of the Indian Contract Act, in which the law of contract, as applicable to India, is embodied in a code. Each section of the Act declares some general principle or prescribes some regulation in plain untechnical language, and wherever necessary there is added a paragraph of "Exception," "Explanation" or "Illustration," as the case may require. In this way can be met the difficulty mentioned by Lord St. Leonards, when he points out the impossibility of foreseeing every contingency likely to occur in practice. Thus, taking the case of undue preference as example, the code might be worded somewhat in the following manner :—

*Rule.*—When any reduction is made from the maximum rates chargeable on any traffic, the same reduction shall be made *pro rata* on the rates chargeable on any other traffic which can be

shown by an applicant to be in competition with the traffic upon which such reduction shall have been made.

*Exception.*—When the traffic between two towns is served by two or more railway companies the distance by the shortest route shall be assumed to be also the distance by the longer routes.

*Explanation.*—When the reduction made on the rates between two towns is no greater than that due to the computed reduction in the mileage such reduction shall not give rise to a claim for reduction on the traffic between other stations. Reductions made in rates to any greater extent than is due to computation of mileage shall be applicable to all stations where traffic is in competition.

*Illustration.*—The distance from a port to an inland town is 100 miles by railway A, 120 miles by railway B. When railway B quotes the same rates for traffic as railway A, the distance by railway B shall be assumed to be 100 miles. If the rates charged are B's maximum for 100 miles, *e.g.*, 15s. on grain, railway B would be entitled to charge the maximum grain rates between all other stations and the inland town.

If the rate charged should be 10s., all grain traffic competing with the traffic from the port would be entitled to a corresponding reduction of one-third from the maximum rates.

*Further Exception.*—When rates are reduced upon conditions relating to economy in transit the onus of proof shall lie upon the company to satisfy an expert appointed by the Board of Trade that the reduction made is in due proportion to the economy anticipated, and that the conditions attached to the rate have been substantially fulfilled.

The foregoing is merely intended as an illustration of the manner in which the law of traffic might be codified. Other sections would express the will of the Legislature upon such questions as foreign competition, group rates, public interest and so forth. The "explanations" and "illustrations" would be taken from typical cases and would either follow the decisions given or state the opposite.

It is to be observed that the amendment of such a code

could be very easily effected, year by year, by the mere insertion of an explanation or illustration with very much less formality than is necessary to pass such an amending Act as the Private Sidings Act, 1904.

3. The ordinary forms of procedure are ill adapted to the intricacies arising in disputes over railway rates. The crying need of traders under this head, as has been said, *ad nauseam* perhaps, in respect of other matters, is the institution of an arbitration tribunal, intermediate between the conciliation of the Board of Trade and the formal litigation of the Railway Commission. Such a tribunal might be utilised also for the finding of complicated facts in important cases before that Court. The recent case of *Pickford & Co. v. London and North-Western Railway Company* occupied the Court for seven days. Five of these, at the lowest estimate, were taken up with the discussion of contested figures which an arbitrator, experienced in carting business, could have unravelled in half a day. Mr. Justice Neville so told the Court of Appeal when he was explaining to them the controversy over the new Heysham route of the Midland Railway Company. The Court admitted, quite candidly, after two hours' exposition of the dispute by Mr. Neville that they were still unable to grasp the respective claims of the parties. "Had three railway managers been appointed to determine it," Mr. Neville replied, "it would not have taken them ten minutes." It seems scarcely possible that full justice can be done in railway traffic cases unless the adjudicating tribunal is versed in the facts of its own inherent knowledge, or is required, or allowed, to take them from one who is.

Under any circumstances the rules of procedure in the Court of the Railway and Canal Commission require revision. Now that the traders have had experience of the obstacles besetting the hearing of their applications they should be invited to confer with the Board of Trade as to the alterations needed.

4. The whole question of the incidence of costs between the parties requires investigation. In many instances the hearing of a trader's application is extended, confused and rendered disproportionately expensive, owing to the flat refusal of the companies to supply the information as to the factors of the rates which the Traffic Acts require them to supply under pain of various harmless penalties. The case last referred to will long remain a classical example of the wrong done to traders by the refusal of the defendant company to separate its rates into conveyance, terminals and cartage, as ordered by statute. The greater part of seven days' litigation was occupied by the Court in ascertaining facts which the statute requires the company to state on application. The final result is no doubt as different as possible from what would have been found by an expert whose business experience had included a month's duty in a railway goods office, and who would thus be able, without the assistance of evidence, to disintegrate the greater part of the rates under discussion.

## CHAPTER XXII.

### PUBLICATION.

THE Acts of 1873 and of 1888 require various items of information to be published or to be supplied to a freighter at his request.

In connection with this topic there are three items of essential importance.

1. Every company is required to keep a station rate book in which are to be entered the rates in force from that station to every station, wharf or place to which they book.

2. Upon orders made by the Railway Commissioners the company is required to inform a trader how much of each of these rates is allotted for conveyance, for terminals, for cartage and for any other extraordinary service included in the rates.

3. When any existing rate is intended to be increased notice of the intended increase has to be published in a newspaper circulating in the district.

No one of these provisions has been obeyed by the Northern companies. Their desire is to secure a monopoly of town cartage and to make a substantial profit on the same. With this object in view they refuse to publish their rates, say, from Birmingham to Northampton. If



the rate between those two stations should be 23s. 1d., all that is published by the company is a rate of 29s. 9d., which includes cartage in Birmingham and Northampton at the rate, at each place, of 3s. 4d. per ton. If a Birmingham manufacturer carts the traffic to the station himself, the company refuse to charge him the 23s. 1d. rate station to station. They insist upon his paying a rate which includes a charge of 3s. 4d. in respect of the cartage which he has done himself, and then, if he respectfully follows the procedure they prescribe, they will return him 1s. 6d. of the 3s. 4d. which they have —— from him. The missing word is left for the reader to fill in. It is considered ill-mannered to use the same expressions in regard to railways as would be applicable in the case of individuals, so the writer hesitates to put any epithet on this transaction.

It is with the view of checking such practices as this (by whatever name it may be elected to call them), that the Legislature required the rates from station to station to be published; it is with the view of continuing these practices, and of retaining in their pockets money which does not belong to them, that the London and North-Western Railway Company resolutely refuse to obey the Legislature and mock at the idea of any penalty which the Act imposes upon them.

Although the station to station rates may not be set out as ordered in the station rate books, the trader who has paid the railway company 3s. 4d. for the privilege of being allowed to cart his own traffic to the station could get his 3s. 4d. back again if the provisions of the Act which relate to the rendering of information as to charges added to the conveyance rate were duly obeyed. It is as

regards these matters of information that the incoherence of the Traffic Acts is at its worst. One scrap of right to information is contained in one Act, and another scrap in another. When the scraps are raked together they do not fit. Some information the trader can obtain for the asking: that is to say, the Act requires it to be given. It is not: but even the Act does not require the company to tell a trader how much he has been charged for carting his own traffic. In order to obtain this knowledge he is required to file an application in the Court of the Railway and Canal Commission.

In Pickford's case, mentioned above, a charge for conveyance, Birmingham to Northampton, is 23s. 1d. The company compel the payment of 6s. 8d. more. They allege that it is for cartage, but if the consignor at Birmingham or the consignee at Northampton ask how much is charged for cartage at either place, the company decline to answer any such question. The trader who carts his traffic may, or may not, be offered 1s. 6d. for the service rendered to the company in relieving them of this piece of work, but the Act does not require the company to tell him how much it was that they charged him for doing it.

He may spend £100 or £200 in going backwards and forwards between the Railway Commission and the Court of Appeal, but he will get no part of the information he is asking for.

Pickfords Ltd., in order to obtain a refund from the North-Western Company of the sums charged against them for cartage, desired to be informed as to how much had been charged to them for collection and how much for delivery when they paid a rate of 49s. 4d. for convey-

ance of spirits, London to Birmingham, doing the cartage themselves both in London and in Birmingham.

During the course of litigation extending over several years Messrs. Pickford obtained four different dissections of the 49s. 4d. rate. Two did not profess to give the information wanted, two purported to give it, but gave it untruly. Such, at least, is the opinion of Sir James Woodhouse, and it is superabundantly manifest that the honourable railway commissioner is right upon the point, although his learned and honourable colleagues appear not to agree with him.

In May, 1903, the company, in reply to a demand in the terms of the Act of 1872, to say how much of the rate is for conveyance, "and how much is for other expenses, specifying the nature and detail of such other expenses," informed the applicant for information that the rate included 32s. 4d. for conveyance and for "residue" 17s. Since 32s. 4d. is the company's maximum charge, the reply told the inquirer nothing. Under further pressure the company made another allocation in December, 1904, asserting, then, that they charged 34s. 7d. for conveyance, and for "other expenses" 14s. 9d. It was not in dispute that terminals and London cartage would together come to 13s. 8d., so this allocation professed to make the cartage in Birmingham 1s. 1d. and to admit charges above the maximum of 2s. 3d. for conveyance. The truth, of course, being, that they simply charged their maximum rates with 6s. 8d. collection in London and 3s. 4d. delivery in Birmingham. As before said, when railway companies deliberately state what they know to be false, the same expressions are not used as would be used in respect to

Messrs. Pickfords if they so acted. In an action complaining that "rebate allowances" and "cartage charges" ought to be, but are not, the same thing, and when this is the only issue before the Court, the company being ordered to obey the Act of Parliament and say what is the charge they have made for cartage in Birmingham, knowing that it is 3s. 4d. assert that it is 1s. 1d. and that they find they have been illegally charging 34s. 7d. instead of 32s. 4d. for conveyance. To Messrs. Pickfords that is, not to themselves. As Sir James Woodhouse points out:—

When called upon by the order of the Court to analyse the rate, what the defendants have done is to take the amounts they are allowing as rebates and say they are the charges.

Their was an error of 5d. in their dissection. So in May, 1905, another analysis was put in, repeating the untrue statement, but professing to obey the order to say what was charged for collection and delivery, and correcting the error of 5d. This dissection runs thus: Conveyance 34s. 2d.; terminals 7s.; collection 6s. 8d.; delivery 1s. 6d. They explain, that being a railway company, they considered they had a right to say that the rebate was the cartage charge, although one was 1s. 6d. and the other 3s. 4d. "We have, by allocating a drawback *de jure*, determined *that* to be our charge for cartage." They have "determined *de jure*" that 1s. 6d. is 3s. 4d., for otherwise they would have no defence to Messrs. Pickfords' application. However, this would not do; apparently, on second thoughts, they felt some reluctance in coming into Court and admitting that they intended to continue to charge



rates above the maximum after their attention was prominently called to the fact that they were doing so.

Accordingly, in December, 1905, another analysis is put in, which is glaringly untrue on the first glance at it.

Now they say that the conveyance charge is 32s. 4d., as it ought to be if the company are justified in putting their full maximum rates into operation; but collection in London, they say, is 8s. 2d. and delivery in Birmingham is 1s. 10d. "Now," says Sir James Woodhouse, "in fact and in practical operation there is no such charge as 8d. 2d." Every living being in London who has anything whatever to do with cartage knows that there is not, and that the charge is the 6s. 8d. which the company said it was before.

Dissections of rates are required for other purposes than cartage rebates; whenever they are asked for, the statements made in reply are always of this character.

Presumably the company's advisers think there is nothing dishonourable in making statements to fit their case on the principle of the "informing and believing" clerks of a bygone generation; if they think so, they may quite possibly be right.

The traders hold an opposite opinion and if the Legislature agrees with them steps might be taken to ensure "further and better" obedience to the Act in this respect.

There are many enactments in the statutes upon the question of the information to be given as to railway charges. There they all are, mixed up with other things, scattered at random here and there, encumbering the



Statute Book and making it bewildering, and no single one of them has ever been obeyed or put into operation yet except by application to the Railway Commission. No such application under the 1888 Act has ever been successful.

A full précis of the facts, the arguments and the judgments in the case of *Pickfords Ltd. v. London and North-Western Railway Company* is given in the February, March and May numbers of the *World's Carriers*, and will be found to be of great importance when any question as to disintegration of rates arises.

In a series of articles, commencing in the July number, the history is traced of the long dispute between the carriers and the railway companies as to the undue preference which the companies accord to themselves as against their rivals in the carrying trade. The Courts condemned the companies' action in case after case, but they continued to do exactly the same thing in another way, as they still do now, when they charge a carrier 3s. 4d. for cartage and allow him 1s. 6d. only for rebate.

Under the head of publication of increases in rates the traders consider that the companies have not acted in good faith to them nor to the Board of Trade as regards what has been done and what has been left undone.

The story of the manner in which the companies obtained the dispensation of the Board of Trade from publishing the increases made in 1893, and now refuse to fulfil the promises and conditions on which alone they obtained it, is related at length in the September number of the *World's Carriers*, from which the following account is here taken.

It was the Lancashire and Cheshire Conference who took up the point, on behalf of traders generally, that the companies refused to obey the law and to say what terminals or other services were included in the rates, and they availed themselves of the opportunity of the intended increase of rates in 1893 to urge their complaints as to this treatment upon the Board of Trade. The Traffic Act, 1888, prescribes that when it is intended to increase any railway rate actually in force, notice of the intended increase is to be published in such form as the Board of Trade may prescribe. Now, the Provisional Order Acts, 1891-92, were to come into operation on 1st January, 1893, and for some time before that date it was known that the companies throughout the United Kingdom intended to make increases in rates over those in force on 31st December, 1892, by the hundred million; and it was manifest, as they had not begun to take the necessary steps, that they did not intend to give notice of the increases in the manner which the Board of Trade had prescribed.

Sir John Harwood, Lord Mayor of Manchester, acting as chairman of the Lancashire and Cheshire Conference on Railway Rates, and being forewarned as to this, wrote to the President of the Board of Trade, Mr. Mundella, expressing his misgivings as to the companies' intended action, and begging him to use the influence of his department with a view to affording traders the full advantage of the statutory provisions on publication. Following on this communication, a meeting was held at the offices of the Board of Trade early in November, 1892, when Sir George Findlay, Sir Henry Oakley, Mr. Beale, Mr. Lam-

bert, and Mr. Williamson attended on behalf of the railway companies they represented. These gentlemen dilated on the impossibility of publishing the intended increases in the form prescribed. Mr. Marshall Stevens and others, on behalf of the Conference, expressed willingness to dispense with form, provided they obtained the reality intended to be given by the statute. They suggested that it would be sufficiently satisfactory if statements were supplied to the Board of Trade, explaining the basis on which the new rates were to be compiled, and, if information, as asked, were given as to the terminals and other charges included in the rates. After some further correspondence the railway secretary of the Board of Trade wrote, 23rd November, 1892, to the secretary of the Railway Association, stating that it was proposed to waive compliance on the part of the companies with the prescribed form on the understanding that the companies should "undertake to supply on forms to be provided by them, full information with regard to any particular rate, or rates, from any specified station upon application by a trader".

This was to meet the complaint that the companies refused to supply details of the sums charged for terminals and the like when formally required to disintegrate a rate. The letter concludes thus :—

The Board of Trade are satisfied that it is the desire of the railway companies (as it is manifestly the intention of the statute) that the fullest possible information with regard to rates shall be *bonâ fide* and readily accessible to traders, and the Department trust that every effort will be made to prevent any ground of complaint for the future.

The companies prepared no formal document in reply to this communication, but the Board of Trade state that it was most clearly understood at personal interviews that, in return for being absolved from the necessity of publishing millions of increases of rates, the companies had agreed to give *bonâ fide* dissections of rates when they were asked for.

In reply to a similar letter, addressed to the Lancashire and Cheshire Conference, Sir J. J. Harwood wrote his opinion that the further details of compound rates ought to be published, and that the rate books should show "how much in each of the eight classes is being provided for collection, delivery, terminal accommodation, and other services, when these, or any of them, are included in the quoted rates".

In default of the distances being shown in the rate books he asked that distance tables should be published. The letter concluded :—

The railway companies and the traders do not seem to be at one in their opinion as regards the meaning of the term "full information," and the Conference respectfully beg to ask that the Board of Trade will define this term.

In reply, the Board of Trade declared that everything asked by the traders was impossible and unnecessary, and they assured the traders, on behalf of the railway companies, that "every opportunity will be given for the acquisition of any particular information which a trader may desire".

The Board of Trade then issued an order suspending the operation of the Traffic Act, 1888, for three months, so far as it prescribed the publication of rates, and in

return, as it were, requiring that rate books should be kept at the receiving offices as well as at the stations, "showing the rates which would be charged for the carriage of traffic from such station, wharf, or receiving office, to any place to which merchandise is booked therefrom". Compliance with this order would, at least, have shown what amount was included for cartage in a C. and D. rate, as that would manifestly be the difference between the receiving office rate and the rate from the station. However, the railway companies flatly repudiated their liability to comply with this part of the order. That the Board of Trade should exercise their power of suspending the operation of Acts of Parliament in favour of the railway companies inconvenienced by them is but just and reasonable; but that the Board of Trade should assume the right to dictate that different rates should be exhibited at receiving offices and at stations, that was an arbitrary and tyrannical stretch of authority which no railway company could be expected to submit to quietly.

The railway companies accordingly availed themselves to the full of the concessions granted them by the Board of Trade, and were thus enabled, as they otherwise would not have been, to put into force many millions of increased rates in January, 1893. Many of these were subsequently cancelled, but when Mr. Shaw Lefevre's Committee sat, the Great Western Railway Company alone were charging increased rates, calculated to bring them in £150,000 per annum. This would make the total railway increase about one million and a half per annum.

But they utterly laughed to scorn the bare idea of



carrying out one particle of the obligation which they had persuaded the Board of Trade to believe they had undertaken to fulfil in return for the enormous advantage granted them, and they absolutely refused, as they still refuse, to give any information whatever as to cartage included in any rates quoted as C. and D. It seems clear that every increase of rate put into operation at that date was and still is illegal.

Parliament might well ask for a formal report from the Board of Trade on these negotiations. If the story is faithfully told in the foregoing pages, then, since the companies have withheld the consideration bargained for they ought to be required to estimate the increases illegally made and to pay the sum estimated into the national exchequer. One million and a half per annum for fifteen years would form a substantial nucleus for an old age pension fund or might be of service to the Chancellor of the Exchequer for any other purpose.

## CHAPTER XXIII.

### PENALTIES.

IN the last chapter attention was called to the fact that companies were required to afford certain information in respect of their rates but that the Northern companies, more especially, declined to supply it.

The penalty imposed for non-compliance with the provisions of the statute is a sum not exceeding £5 per day. The difficulty of enforcing any such provision is that the informer or complainant would, in all probability, be taken by one appeal after another to the House of Lords. There would be alleged to be some technical flaw in the indictment which would enable the incriminated company to contend that the magistrates had no jurisdiction to award the particular penalty in question, and any trader who succeeded in obtaining a conviction would have interminable trouble in retaining it. Various Parliamentary Committees have recommended that the Attorney-General should be instructed to take action when the companies ignore their duty to the public at large. Power is given by the earlier Acts, and is still available for this purpose. There would certainly be 10,000 stations at which station to station rates are not published. Wherever it happens that cartage charges and rebate allowances are not the same, the railway rates

are not published at all. As before stated the Board of Trade in November, 1892, by the order in which they absolved the companies from publishing notice of their intended increases, called upon them to publish their station to station rates in conformity with the provisions of the Acts of 1872 and 1888. This has not been done, and the object in not doing it is to enable the companies to make charges for services not rendered. In refusing to carry out their undertaking to the Board of Trade the companies have incurred penalties of £5 per day at each station, say £50,000 per day. It is hardly open to an English Attorney-General to lie by for fifteen years and then claim £18,250,000 per annum for penalties. But what is open is, that the companies should now be required to carry out the understanding with the Board of Trade forthwith ; that they should publish their station to station rates at every station and their collected and delivered rates at every receiving office. If this is not done, after due warning given, the Chancellor of the Exchequer would be fairly entitled to his full penalty, day by day, until it is.

Whether any such steps are taken or not, amendments in the Acts are required to make plain the duty of the companies as regards publication and the giving of information as to the composition of their rates.

## CHAPTER XXIV.

### AMALGAMATIONS.

THE reports of Parliamentary Committees appointed to inquire into the management and working of railway companies treat the allied questions of amalgamation and working agreements as of great importance to the trading public.

They have continually reported their opinions on this subject to Parliament, but on this point Parliament turns a deaf ear to all their suggestions.

The Select Committee of 1872, after referring to the apprehensions and warnings of previous Committees and the continued progress of amalgamation, notwithstanding, says :—

These facts and figures afford proof that the general recommendations and resolutions of Committees, Commissions or Government Departments have had little influence upon the action of Private Bill Committees, and have not stayed the companies in their course of union and amalgamation.

Even when there is no amalgamation, competition between companies is a very variable quantity.

There is little real competition between companies, and its continuance cannot be relied upon. There is at the present time considerable competition in point of facilities, but the security for its continuance is uncertain.

They thought that, amongst other things, the question ought soon to be considered

in what manner can the railway systems of the different companies, taken as a whole, be harmonised and extended so as to develop their several capacities to the utmost extent, and so as to secure to the public the full use of and free choice between the lines.

As amalgamation increased so further regulation became necessary.

It is admitted that amalgamation must prove a source of increased economy and profit to the shareholders, and that in order to effect it fresh powers must be obtained from Parliament. It is clear therefore that Parliament in granting such powers has a perfect right to insist on fresh conditions in favour of the public, whether such conditions have special reference to dangers apprehended from the amalgamations or to defects in the existing arrangements between the companies and the public.

In studying the whole report of this Committee it is surprising to note how clearly the members perceived the dangers to the trading public which were, even then, impending. All the great companies were striving after an accession of power through amalgamations, extensions, acquisition of small companies or their control by means of working agreements for long terms of years or perpetuity.

The adjoining companies, too, made alliances with one another, and entered into agreements for maintaining rates and refusing facilities.

One remedy proposed and provided was that all working agreements between companies should be subject to approval and revision by the Board of Trade ; but all this comes to nothing for want of means of representation on



the part of the public. However good in theory it may be to instruct Parliamentary Committees and the Board of Trade to safeguard the general interests of the public when private bills or working agreements are before them, nothing can come of such instructions in practice unless some authority is appointed to speak and act on behalf of the public on such occasions.

The railway companies now have devised a method of acting unitedly as one body; the traders, on their part, remain as disunited and helpless as ever.

If means could be found to enable traders to work together suitable measures of traffic regulation would follow as of course; so long as traders remain without organisation and with no executive authority traffic regulations do little more than provide occupation for the makers of ink and paper. These points are enlarged upon in the chapters on "Railway Combination" and "Traders' Union".

## CHAPTER XXV.

### RECOMMENDATIONS OF PARLIAMENTARY COMMITTEES.

IT is of interest, in recalling the strongly expressed opinions of the Parliamentary Committee of 1872, to note that exactly the same complaints were made then as now ; exactly the same remedies were proposed as those the traders are now asking for ; exactly the same observations as to the futility of Acts which expunge themselves with their own exceptions ; exactly the same requirements that the tribunal to whom is committed the enforcement of the Traffic Acts should be composed of members who have had practical experience of railway traffic. Nothing is claimed by traders at the present day, nothing is suggested in the present treatise, over and above that which that Committee, summarising the opinions of others, advised Parliament to be the undoubted right of the trading public. As it is asked now, the Committee advised then, that tinkering legislation should be superseded by an Act intended to enforce the main principles of railway law and equity in an unhesitating manner.

Since the report of the Committee two important Acts have been passed to give effect to it ; that of 1873, instituting the Railway Commission, and that of 1888 strengthening the Railway Commission, extending its

powers and restoring the law where it had been broken down by legal decisions.

And now, after thirty-five years of legislation and litigation, complaints and grievances remain precisely as they were. Every "i" of the trader's grievances is dotted now, exactly as it was then, every "t" of the complaint is crossed in identically the same manner. Remedies provided are worse than the disease. The relief obtained is frequently very little and the expense is frequently very great. So the Committee reported in 1872.

Complaints have been made that the difficulty and expense of taking a case before the Court of Common Pleas are such as to deter any but wealthy traders, who have a great interest at stake, from contesting cases with the powerful railway companies; and questions of undue preference are often so technical, so dependent on special circumstances of railway management, and so closely connected with questions of "due facilities" as to lead the Committee to the conclusion that even this part of the Act has not been as much brought into play as it would have been if speedy and summary reference could have been made to a tribunal having practical knowledge of the subject.

The Committee of 1872 did not hesitate to express their opinion that matters should not be left as they were.

The case of the public against the railway companies is a very strong one. They are monopolists who are unlimited in their charges for carriage except by the Parliamentary maximum.

Nothing since that date has happened to weaken their monopoly. A few powerful companies have been created since then by the amalgamations of hundreds of smaller ones. And now these, in their turn, all work

together, where their interests are not the interests of the public, through the medium of the Railway Association, which they have formed for this purpose. Under the directing auspices of the Association local "Conferences" are formed in every district to prevent any concession being made to the trader from the full vigour of the companies' powers.

As in 1872 :—

They are practically under no restriction except that of their own interests which may not be the same as that of the public.

In practice it most certainly is not, but in law the Courts now hold, as against an applicant, that the railway interest and the public interest is one and the same thing. To every complaint of unjust or unequal treatment, of refusal of through rates, of denial of facilities, the standard reply of the companies, now become law, is that the course they adopt is in the "interest of the public". According to the London Docks cases the railway companies would be acting fully within their rights if they refused to receive or deliver traffic by rail at any docks in London, because it is not in the public interest that they should do so, otherwise than upon their own terms.

In 1872 it was the custom of the companies "to favour one place or one description of traffic at the expense of another". And so now ; the only difference is that in 1854, in 1873 and in 1888 the practice was condemned, whilst now the practice is sanctioned if a railway manager expresses the opinion that it is in the interests of the public that business should be taken from Liver-

pool and given to Bristol, or taken from Pickering Phipps and given to Butlins.

In 1872 "they charge two different rates for the same service if they think it in their interest to do so". In Manchester at the present moment three different rates are charged for the cartage of the same goods to the same station, brought in the same cart from the same manufactory, and in respect of which the services rendered are absolutely identical. In this case the carriers complain that the object is to annihilate their business for the benefit of the company, and that every regulation of the statute law bearing upon the subject is infringed wilfully by the system adopted. In reply to this complaint the "convenience" of the public is set up as a sufficient justification, and the "convenience" is held to be proved by the fact that no complaint has been brought into Court before. By which process of reasoning it is proved that it is to the "convenience" of carriers that they should conduct their business at a loss, for they have not complained to the Courts before, and, until the case law is altered, they are not likely to do so again.

In 1872 it was found that the railway companies refused to supply information as to the manner in which their rates were made up, and "the remedies given by the Railway and Canal Traffic Act, 1854, must under such circumstances fail for want of the requisite knowledge". And it is found too "that the recent Act" (requiring dissection of rates) "is really useless". The Acts of 1873 and 1888 did no more than vary the inutility of the previous ones, and in 1907 the position is



that which has been described in the chapter on Publication.

In 1872 the Committee report :—

It is not surprising, under such circumstances, that there should be discontent.

In 1907 Mr. Lloyd-George says :—

I have been very much impressed with the great and growing discontent with the whole system, so much so that I will use all the influence I possess with the Government in order to induce them next year to deal effectively with this question.

In reply to which statement the companies assert that all appearance of discontent is imaginary and manufactured, and no grievance exists of any kind. They appeal to the want of complaint to the Railway Commission or to the Board of Trade as fully confirming their views that no amendment or alteration is necessary either in law or in practice.

In 1872 the Committee say :—

There appears to be no reason why they should not freely give to every trader making inquiry the same knowledge or information which they must necessarily give to every clerk or stationmaster who is empowered to charge rates ; or why they should not frame a scale distinguishing between terminal charges and mileage and let this also be accessible to the public ; or why, lastly, they should not be bound to furnish in writing, on the application of the Board of Trade, or of some competent authority, such as the Commission referred to below, their reasons for making any charge which is complained of, either as being exceptionally high or exceptionally low, or otherwise unfair, either to the person or class of persons paying it, or to any particular place or trade.

Twenty years afterwards, when none of this had been done, and when the companies were pressing the Board

of Trade to absolve them from Parliamentary regulations which would have prevented them from making millions of increases in their rates, the Lancashire and Cheshire Conference wrote :—

In considering the new class rates which the companies are about to put into operation, some basis must have been adopted in the fixing of the actual class rates, terminals and other charges which would be included in the full class rate to be charged. If information on this basis were obtained from the railway companies, it would serve the same purpose as if the railway companies supplied the whole of their class rates, and I think you will see the importance to the traders of the Board of Trade requiring this information to be furnished.

To this communication the railway companies replied, vouchsafing no reason, that every suggestion made by the traders, small or great, important or unimportant, one and all, without any single exception, were “utterly impossible”.

“Impossible” in railway phraseology simply means “that which railway managers do not wish to do,” and obviously, in that sense, what the traders asked and the Parliamentary Committee recommended was “impossible” to the tenth degree.

What the companies had agreed to do at meetings of the Railway Association and what they in fact did, was immediately to put into operation the maximum of every charging power the recent Act had accorded them, and bearing this in mind, it will be seen how “utterly impossible” it was to make such an announcement beforehand. If this had been done the Board of Trade would not have suspended the operation of the Act of 1888 for three months, and the charging of the intended increases

would have been "impossible" in the ordinary sense of the word.

After the observations above quoted the Committee recommend that station rate books should be kept :

distinguishing terminals from mileage rates: that no rates should be legally chargeable unless first entered in this book, etc.

The half-hearted legislation adopts all the recommendations of the Committee—save one. The companies are ordered to enter certain things in their rate books. They do not enter these things in their rate books. There the matter ends, for the Legislature would not go on to prescribe that rates should not be enforceable in default of publication.

True, the Acts allow a trader, who is being charged for a service not rendered him, to institute an expensive lawsuit to ascertain how much he is charged for the service in question. Pelsall, Tomlinson, Pickfords, and many another overcharged trader, have spent their money in asking this question, but no one, as yet, has ever succeeded in getting an answer.

The Committee of 1872 attached great importance to the suggestion that fresh powers should not be conferred on railway companies unless some equivalent concession were made by them in return. They say:—

At the same time, full opportunity should be given on every occasion presented by amalgamation bills for hearing and redressing any specific complaint that may be made with respect to existing rates and fares; and, for this purpose, care should be taken that traders or other persons interested are not prevented by any rules of *locus standi* from appearing and urging their case before the Committees on the bills.

No more practical effect has been given to this recommendation than to any of the others.

The report is a very voluminous one, about 160 of these pages, and a perusal of it will go far to convince any impartial person that the remedies claimed, on behalf of the traders, in this treatise are all just and reasonable and are all urgently needed.

## CHAPTER XXVI.

### RAILWAY ASSOCIATION.

THE consolidation of the Railway Association has placed difficulties in the way of traders which did not exist when the last Traffic Act was promulgated. At that date, 1888, each company managed its own affairs and acted independently in matters of general policy.

It was the Inquiry into Classification and Maximum Rates by the Board of Trade in 1889-90 which brought into prominence the necessity for organisation on both sides. The railway companies had the means all ready to their hands; the traders had not. The Railway Association, under the honorary secretaryship of Sir Henry Oakley, undertook the engineering of the railway case with an efficiency which has resulted in the firm organisation of the railway powers. The companies, during the inquiry, notwithstanding some slight divergence of interest, stood firm in one serried phalanx under the powerful leadership of Sir Henry Oakley, and their unity of action was as extreme as the disunion and discord among traders. A common peril created some bond of union amongst traders in 1890, but, slight as it was, little of it is still remaining. Not long since a judgment was given



by Mr. Justice Wright on a question of increase of rate. The learned judge said :—

The principal complaint of the applicants in this case is of increases made in 1893 by the railway companies in their rates on goods traffic in classes 1 and 2. In that year there was an advance of a great number of goods rates by railway companies to the extent of between 3 and 5 per cent., and under the Railway and Canal Traffic Act, 1894, we have to decide whether that advance was reasonable. The question has been fought on grounds which are not peculiar to the particular traffic of the applicants, but affect *the whole goods and mineral traffic of all the railways in the United Kingdom, and future as well as past increases of rates.*

According to the view of the law which his Lordship favoured, 1 per cent. of increase was found to be justified, according to another view, 3 per cent. was justified. It seems scarcely doubtful that his Lordship's view was in accordance with the previously expressed opinions of the Court of Appeal; funds, however, were wanting to meet the comparatively trifling expense involved in settling this point, and 2 per cent. of the *rates on the whole goods and mineral traffic of the United Kingdom* was then and there abandoned, for themselves, and for everybody else, because the applicants were unable or unwilling to provide the £50 or £100 required to meet the costs of an appeal. If the costs to the railway companies had been estimated at £50,000 to £100,000, there would have been two lines of print on the agenda of the Railway Association, the resolution in favour of appeal would have been passed without discussion, and the subscribing companies would each have contributed their quota of cost automatically.

In round numbers 2 per cent. of £50,000,000 per annum is at stake. One million sterling per annum, in the view

of the learned judge, is being illegally charged by the railway companies, and the traders' organisation is not equal to providing £100 in support of his Lordship's view.

On the other hand, had it not been for the Railway Association, who stood in the forefront to withstand the shock of battle, not one company in ten would have dared to face the obloquy caused by a sudden increase of railway rates to the extent of £1,500,000 per annum, which the companies made in 1893. But what separate companies in their individual capacity would not have ventured upon, the united railway interest, represented by the Railway Association, not only did, but adhered to. The President of the Board of Trade wrote saying that

it would be impossible to remove the almost universal dissatisfaction which prevails unless there were at least a general return to the basis of the 1892 rates.

The Railway Association replied that they would do no such thing. When the Select Committee of 1893 reported to the effect that the action of the railway companies had been unjustifiable in every respect the Railway Association stood its ground and the companies maintained the same position. During the past two years incessant complaints have been made to the Board of Trade concerning the attitude adopted by the companies generally. The President of the Board of Trade again complains of the withdrawal of facilities ordered by the local railway "Conferences" and refers to the alarm occasioned by the companies' aggressive measures. The Railway Association is as unmoved and immovable as before. The companies

admit no grievance ; they propose no remedy ; they intimate, with every outward form of courtesy, but with unmistakable clearness, that by means of their Association they intend to exchange competition and regulation for the fullest form of monopoly, and to continue every practice of which complaint is made. It is difficult to put a money value on the loss occasioned to the trader by the action of the Railway Association since its formation in increased rates, withdrawals of concessions and full enforcement of subsidiary charges. Nor is it easy to foresee where this will end. By the time that combination has fully taken the place of competition the difference to the companies may be expected to amount to 20 per cent. of their existing revenue. Nor is there much doubt that the companies would willingly submit to a 20 per cent. reduction in maximum rates and fares in return for a legislative sanction to the continuance of their Association and the raising, through the means of it, of all rates unduly lowered by competition.

## CHAPTER XXVII.

### TRADERS' UNION.

ONE solution of the difficulty occasioned by the combining power of the companies might be found in the foundation of a still more powerful combination on the traders' side.

Reference has been made in these pages to the Lancashire and Cheshire Conference on Railway Rates. This Association was formed in 1885 when several companies had presented consolidating bills to Parliament, all claiming very much greater powers than those which Parliament has since seen fit to accord to them. The Conference vigorously opposed these bills, which were, in consequence, withdrawn. The outcome of this action was the Act of 1888, which assumed a shape much more favourable to traders than it would have done had it not been for the action of the Conference at the Grand Committee stage of the measure.

During the time that the revised schedules of maximum rates, which have since developed into the various Provisional Order Acts, 1891-92, were before the Board of Trade and Parliament this Association worked incalculable benefits for traders generally. With the exception of

the Lancashire Conference no one was ready, and no one was prepared to make suggestions as to any sensible basis either for classification or for rates. It is to the unwearied efforts of the late Sir J. J. Harwood, of Mr. Marshall Stevens and of the town clerks of Manchester and Bolton that any serious opposition was presented in the first instance to the companies' extravagant proposals. Other associations were soon formed, especially the Mansion House Association, and, at great expense and trouble, they successfully contested the claims of the companies.

These claims, as may readily be imagined, were unconscionable to the highest degree. Of the traffic in the classes numbered 1-5, probably one-half is conveyed as "small parcels not exceeding 500 lbs. in weight," conveniently spoken of as "smalls". On all this great bulk of traffic, looked upon in early days as a comparatively insignificant item, most special Acts authorised the companies to make "such reasonable charges as they think fit". The companies' ideas of "reasonable charges," viewed in the light of what they "thought fit," was embodied in their revised schedules in the form of a proposal to charge on "small parcels" double the fifth class rate. Mr. Thomas Brook, of Plymouth, gave evidence as to the effect of this on the ordinary business of his firm.

A list of their consignments from Manchester showed their total yearly weight to amount to 170 tons. Of this, 86 tons, consigned as ordinary traffic, was charged £197, while 84 tons, consigned as "smalls," was charged £222. This difference the traders would consider fairly proportionate to increased cost of handling. The rate proposed by the companies' schedules would increase the



charge on 84 tons of "smalls" from Manchester to Plymouth from the tonnage charge of £197, and the actual charge of £222, to the sum of £912. And so with their London traffic; and so with the traffic of all traders throughout the country, whose business it is to deal with small consignments of goods.

Traders' advocates, misled by the insidious title of "small parcels," did not at once perceive the full force of this demand, and had it not been for the energy of the Lancashire and Cheshire Conference the importance of it stood much chance of being overlooked until such time as, the inquiry being over, the schedules had been practically sanctioned by authority.

The Conference was composed of the cities of Manchester and Chester, twelve County Boroughs, seventeen other Municipal Boroughs, nine Local Boards, seven Chambers of Commerce, thirty-two Trade Associations, together with representatives of a number of trades which do not possess such associations. It proposed to deal with legislation, and did not consider it to be within the scope of its duties to keep watch and ward over the legislation provided, and to take measures to ensure that it was subsequently enforced and fully carried into effect.

Experience has shown that the one duty is fully as important as the other. Much as it is desirable to pass excellent laws the labour is expended in vain if no attention is paid to them after they are once sanctioned. It is ten thousand pities that the Lancashire Conference suspended operations when their work was in reality but half done. The Association had succeeded beyond expectation in their work of construction, but for want of supervision,

the structure, they had been so largely instrumental in erecting, began to be subject to demolition when it was still hardly completed. Had that Association thought fit to carry on the work of protection, others would have been formed on similar lines and an organisation of defence would have existed of immense benefit to the trade, commerce and agriculture of the country. The Railway Association has now made it its business to see that the whole power of the companies throughout England is to be united and brought to bear upon every item of working so as to ensure that every detail, without exception, shall be manipulated solely in the railway interest. More important still, the whole country is divided into conferences, whose business it is, henceforward, to prevent any concession being made to traders and gradually to withdraw all those already made.

In face of this all-powerful combination mere outcry, lamentation and deputation are of no avail. Government departments will be willing to assist in extricating traffic law from the slough in which it is now embedded, but the traders themselves must first bring their own energies to the task and initiate movement in the direction they think necessary. It is because the writer has worked with the Lancashire and Cheshire Conference and has watched the efficacy of its procedure that he ventures to call attention to the methods adopted as affording the one sole means of grappling with the traffic encumbrances now besetting the trader's path. The essential feature of the scheme of association was that the different local authorities had agreed to work together through the machinery of a committee and secretary and

to subscribe, *pro ratâ*, the funds required. The contributions of the local authorities were assessed upon their rateable value, the contributions of associations were assessed by agreement, and, when funds were wanted, they were provided by a call which weighed with comparative lightness on each separate contributor. This is the model upon which it is suggested that a combination should be formed capable of encountering the railway combination on an equal footing on its own ground. Wherever the incidence of railway rates is felt to be unduly oppressive on the industry of a district, two or more counties should unite to form a conference dealing with railway questions generally and with those affecting the welfare of their neighbourhood in particular. The assumption that their action would necessarily be hostile to railway companies is not well founded. The Lancashire Conference had no personal interests to favour, and on all contentious points was able and willing to devise terms of compromise advantageous to both sides.

In Kent the standard industry is fruit, and the fruit traffic affords a typical example of the improvements capable of being effected. Evidence was given before Earl Jersey's Committee showing how grievously this traffic suffers at the hands of the South-Eastern and Chatham Companies. Mr. Vincent Hill's answer consisted of the usual stock platitudes (copied in this case mainly from Mr. Pratt's articles) on bulk and packing and competition. In this special case all these had been shown to be in favour of the Kent grower and against the foreigner. Mr. Vincent Hill was accordingly requested to forego vague assertions for this one occasion, and to

reply to the specific statements made as to the preference of foreign fruit and the ill-treatment accorded to Kent produce. So long as Mr. Hill was allowed to soar up into the clouds of generalities (if this expression may be pardoned), and address the public from that sublime height where the traders do not attempt to follow him, he was as triumphant as are other managers when in the same lofty situation. When he was requested to set foot on solid ground and discuss substantial figures and facts he gave up the contest as hopeless. In five columns of blue book the complaints and arguments advanced on behalf of fruit growers are marshalled against him and five corresponding columns are provided for his reply. He found an answer to one calculation, but when "public interest," "competition," and the like airy nothings were barred in an arithmetical contest, Mr. Hill had nothing to say and the columns allotted to him in the report of the Committee remain an unsullied blank. Mr. Vincent, like his colleagues, takes refuge behind "bulk of traffic" as one of his lines of defence. He describes in his evidence how the 5,000 tons of foreign traffic arrive by the full train load, and are at once despatched by two or three special trains, one after another, as fast as a few vans can be got loaded in order that every precious half-hour may be saved to it, while the 45,000 tons of English fruit is kept waiting for hours at the stations until it can be sent up by the full train load, hours late for market. As beforesaid, when it is suggested that "bulk of traffic" cannot justify the reduced rates on this foreign traffic, the space left for reply to the suggestion cannot fail to be otherwise than blank, though this does not prevent



the argument from being continually repeated. The blue book referred to is 1906 [Cd. 2960].

For all that, if the Kent County Council would inaugurate a South-Eastern Counties Conference which would deal with the fruit traffic question and bring it to an issue, arrangements might be made satisfactory to the company, to the growers, and to the salesmen, and be such as would add an average profit of 70s. per acre to the whole 50,000 acres of Kentish fruit lands. The writer suggested them to all concerned, every one acquiesced and agreed, but for want of a representative body invested with powers plenipotentiary to make binding terms nothing could be done and the grievance remains as sore as before.

The same observations would apply to the fruit of Cambridgeshire, to the potatoes of Lincolnshire, to the grain of Norfolk. There are few places where some compromise might not be effected, advantageous to both parties if both were imbued with a conciliatory spirit.

In Kent the South-Eastern and Chatham Company want as many shillings and pence as possible; the growers do not care so much for shillings and pence as for hours and minutes in delivery on the market. There is here ample scope for negotiation, and there would be elsewhere if conferences were instituted with sufficient powers of negotiation to warrant their acting as mediators. According to the scheme indicated each local conference would deal with its own local interest. A joint committee worked on the plan of the Railway Association with each conference represented by one or more members



would safeguard the general interests of the trading public and would take steps to repair the law, year by year, as cases decided in the Courts had broken down the protection of the statutes and had rendered repairs necessary.

If the Local Government Board have not already power to authorise a call of the fractional sum necessary to defray expenses the power should be given in an amending Act, but it would appear that they have.

Current expenditure might amount to, say, £100 per annum per county. Cases before the Courts, and opposition to bills in Parliament and the like would cost the ratepayers of each county £20 to £25 more. Traders and trade associations might be expected to share half of this small expense, voting power being attributed to them, on sound constitutional principles, in proportion to their contributions.

This is not the place to elaborate a scheme in detail; the general suggestion is made, that following the example of the North the regulation of railway traffic should be made a municipal duty. The framers of the Act of 1888 foresaw the desirability of municipal action and made provision for it in the Act.

Desirable as it is, it is met with the well-nigh insuperable difficulty attaching to "everybody's business". The Act of 1888 is permissive, merely, as regards local authorities, hence nothing is done. With the slightest spark of compulsion the whole machinery would be set in energetic motion. Thus, a statutory Memorandum of Association might be made the schedule to an Act which would come into force in each county unless it were

decided otherwise by formal resolution. With an average expenditure of £125 per county the whole traffic of the United Kingdom might be placed upon a thoroughly satisfactory footing, and possibly one hundred times that amount added to the value of its agricultural land.

## CHAPTER XXVIII.

### AMENDMENT OF LAW.

FROM the foregoing pages it will be seen that amendment of traffic law is urgently needed under every heading dealt with. Parliamentary Committees have formulated the traders' charter of equal treatment, due facilities and reasonable rates, and have advised Parliament as to the details of legislation required to give active effect to them. The legislation provided was marred by hesitation at the outset, was cumbersome, unintelligible and confusing, and such as it was, it has been further weakened, Act by Act, by exceptions and provisoes until the power of it has been gradually brought down to close upon zero. In interpreting the traffic Acts the Courts have systematically treated principles and rules as of minor consequence, and the exceptions have been glorified into a magnitude leaving all else barely discernible.

It may be taken that what with exceptions and case law the whole structure of the statute law is now broken down to its foundations, and hardly a fragment remains standing of the edifice suggested by the Committees. When the Court of Appeal, in the last London Docks case, adopted the view that traffic Acts applied only to traffic delivered at stations and thus exempted some nine-tenths

of the whole from their operation, Parliament immediately passed an Act reversing the judgment of the Court. There was the less difficulty in getting this short Act through Parliament because the violation of principle was so extreme as to be manifest to everybody, and it was clearly seen that the Railway Commission would have nothing to do, except to sit as arbitrators in railway disputes, until the Act was made workable once more.

If there is to be any reality in the improvements promised by Mr. Lloyd-George, provisions should be made for the repair of the law immediately that a breach is made in it. It should be the appointed duty of some authority or association to report, as occasion requires, but not less than once in every year, as to the interpretations given, or claimed to be given, to the statute, to point out their tendency, and to suggest the steps necessary for the preservation of the law in its full integrity.

In a former chapter it has been urged that the statute regulating traffic should take the form of the Indian Contract Act. If this were done there would be the minimum of difficulty, year by year, in making such verbal alterations as would suffice to keep intact the general principles of the law. The Act could be re-edited, as it were, every year and a paragraph of "exception," "explanation" or "illustration" added wherever needed.

As it is, the Railway Commissioners report yearly upon the cases brought before them, and it is suggested that no better procedure in the way of revision could be adopted than for the Railway Commissioners to call attention in their report to the points of law giving rise to doubt in the cases decided. The Board of Trade,

presumably, would then propose the explanatory paragraph or alteration, after hearing the views of the traders and of the railway companies.



## CHAPTER XXIX.

### CONCLUSION.

FROM the foregoing pages it will be seen that from the earliest days of railway legislation the Parliamentary Committees appointed to advise upon the due relation between railway companies and their trader customers have consistently formulated the opinion that the companies are under a contractual obligation towards the public, that they do not fulfil this obligation, and that the legislation enacted has been invariably ineffectual for the purpose intended.

The causes suggested for the inefficacy complained of are, primarily, the complication of the statute law, its indefiniteness, and the absence of any practical means of enforcing it.

Statutory regulation of railways is at present almost a dead letter ; little, if anything, now remains of it except the exceptions. If it is to be restored once again to its original form it can only become effective by being codified and simplified. Such protection as Parliament is disposed to grant to traders should be expressed by means of clearly worded rules, undistorted by exceptions ; effective means of enforcement should be provided, and the pro-

cedure for enforcement should be within the means and powers of individual applicants.

The institution of an inexpensive tribunal with power intermediate between that of the Railway Commission and that of the Board of Trade has been constantly recommended by Parliamentary Committees, and is now, more than ever, an urgent necessity. Lastly, some further union amongst traders requires to be devised and legislated upon. With simplification of law, simplification of procedure and alliance between traders, a more healthy system of traffic management would be introduced, and the greatest gainer by the alteration would be the English railway shareholder.

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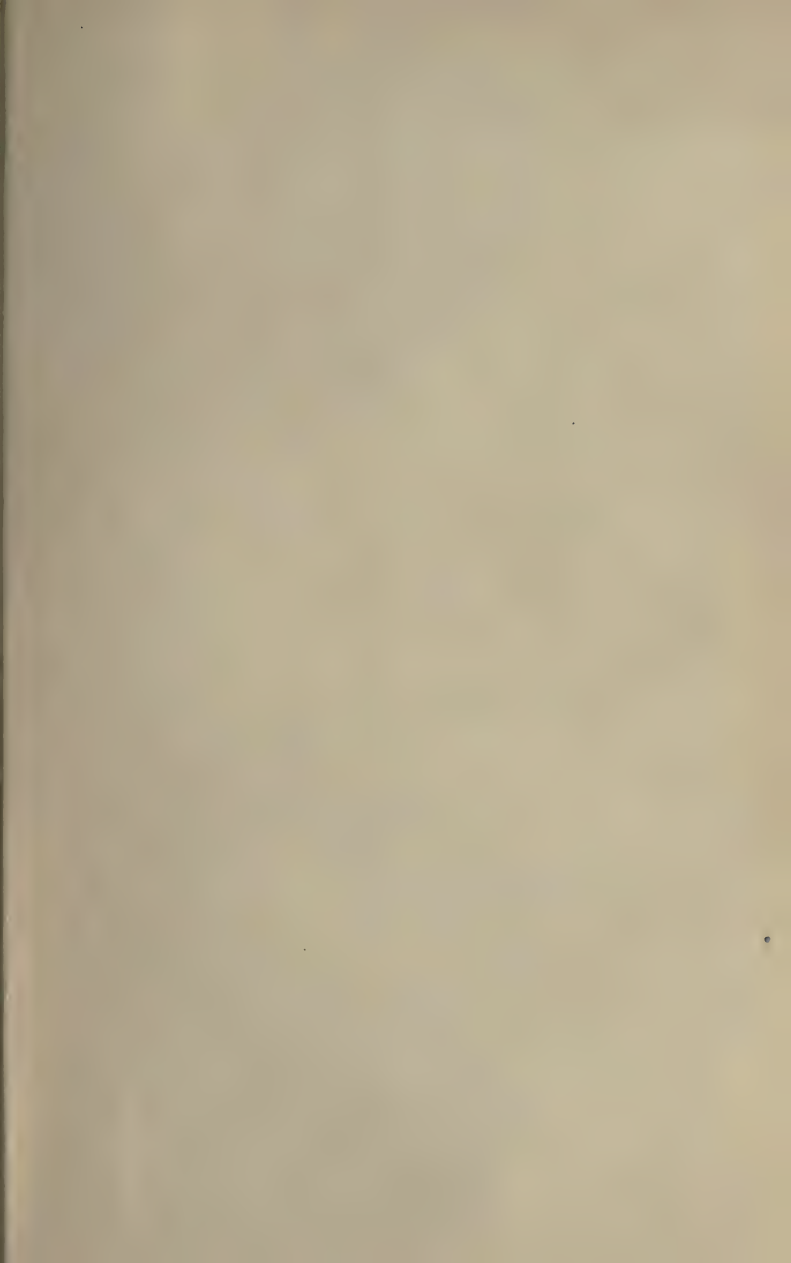
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